

Please
handle this volume
with care.

The University of Connecticut
Libraries, Storrs

hbl, stx

JV 6455.K6

Immigration and aliens in the Unit



3 9153 00628562 3

92

IMMIGRATION *and* ALIENS
IN THE UNITED STATES



IMMIGRATION *and* ALIENS IN THE UNITED STATES

STUDIES OF AMERICAN IMMIGRATION
LAWS AND THE LEGAL STATUS
OF ALIENS IN THE UNITED STATES

By

MAX J. KOHLER

A.M., LL.B., D.H.L.

WITH A FOREWORD BY

HONORABLE IRVING LEHMAN

*Judge of the Court of Appeals
of the State of New York*

NEW YORK
BLOCH PUBLISHING COMPANY

1936



Copyright, 1936, by
BLOCH PUBLISHING CO., INC.

Printed in the U. S. A.
BARNES PRINTING CO., INC.
NEW YORK, N. Y.

FOREWORD

During the decades before the Great War, immigrants from the Old World sought in America opportunities denied to them in the countries of their birth. America accepted their brawn and brains. Indeed, she needed their brawn, at least for hard unskilled work which could not then be done by machinery and which offered rewards too small to attract native Americans. In other fields, too, many immigrants made fine contributions in building up the country and rendered return in full measure for what they received here.

The children of these immigrants have been educated in our schools. They form a large proportion of the citizens of today, and the perpetuation of the traditions and institutions which are the true soul of America depends in large measure upon the loyalty and the spirit of the descendants of the immigrants to whom America opened wide its doors. Each generation has had the responsibility and the duty of inculcating in the immigrants and their children a love of America and an understanding of the spirit of ordered freedom which underlie our institutions; yet in each generation there has been a lack of that sympathy and good will towards immigrants which is essential to complete understanding. Too often the immigrants and even the children of immigrants have been regarded as alien intruders to whom fair treatment may be accorded as a favor but may not be demanded as a right. Too often immigrants and even the children of immigrants have been made to feel that as to them "equality before the law" was a phrase rather than a fundamental principle.

Max J. Kohler chose the law as his profession because in its practice he saw opportunity for important service. He was one of those rare beings who throughout his life held intact the generous ideals and purposes of youth. Justice was his passion and the spirit of the America which he loved was, he believed, the spirit of justice. While still a very young man he became an Assistant United States Attorney. He began then the study of the laws governing the rights of immigrants and aliens. To him it seemed evident that though their rights were, in some respects, different from those of citizens, yet this country would be false to its principles and blind to its own highest interests if it denied to its prospective citizens a full measure of justice and even of sympathetic understanding. He never refused a call to defend the helpless against threat-

ened injustice. By his learning and by his courage he had a great influence in establishing the legal rights of those who were not citizens. He clarified the law in this field. He labored also to make them valuable citizens. These collected papers are the result of deep study and thought. They seem to me to embody something of the spirit of Max J. Kohler, and we need that spirit.

July, 1936

IRVING LEHMAN.

CONTENTS

	PAGE
FOREWORD	iii
PREFACE	vii
ACKNOWLEDGMENT	x

PART I

IMMIGRATION

I. LEGISLATION	
<i>A.</i> Recommendations to U. S. Immigration Commission..	1
<i>B.</i> National Quotas Law.....	22
<i>C.</i> Ameliorating the Quota Laws.....	32
II. ADMINISTRATION OF LAWS	
<i>A.</i> Administration of our Immigration Laws.....	46
<i>B.</i> Justice to Immigrants.....	66
III. THE RIGHT OF ASYLUM	
<i>A.</i> Immigration and the Right of Asylum for the Perse- cuted	78
<i>B.</i> The Alien and Right of Asylum.....	99
<i>C.</i> The International Protection of Human Rights.....	121
IV. RACIAL DISCRIMINATION	
<i>A.</i> The Un-American Character of Race Legislation.....	131
<i>B.</i> Immigration and Racial Discrimination.....	149
V. JEWISH IMMIGRATION	
<i>A.</i> Jewish Immigrants	164
<i>B.</i> Illiteracy of Jewish Immigrants and Its Cause.....	200
<i>C.</i> Jewish Immigration to the U. S.	229
<i>D.</i> A Mis-Description of the Immigrant Jew.....	232
VI. CHINESE IMMIGRATION	
<i>A.</i> The Administration of our Chinese Immigration Laws	251
<i>B.</i> Coolie Versus Privileged Classes.....	263
VII. MISCELLANEOUS	
<i>A.</i> Immigration of Unaccompanied Males.....	275
<i>B.</i> Some Aspects of the Immigration Problem.....	280
<i>C.</i> The Stranger at our Gates.....	296
<i>D.</i> European Investigation of American Immigration....	300
<i>E.</i> The Attitude of the Fathers of the Republic.....	321

PART II

ALIENS IN THE UNITED STATES

PAGE

I. LEGAL STATUS OF ALIENS

Legal Disabilities of Aliens in United States..... 327

II. REGISTRATION OF ALIENS

A. Why Registration of Aliens is Inadvisable..... 340
B. A Dangerous Project..... 363
C. The Michigan Alien Registration Law..... 389

III. NATURALIZATION PROBLEMS

A. Naturalization and the Color Line..... 392
B. Racial Classification under our Naturalization Laws... 399

IV. DEPORTATION OF ALIENS

A. The Exclusion and Expulsion of Aliens..... 406
B. Enforcing our Deportation Laws..... 408
C. The Deportation of Aliens..... 417

PART III

TRIBUTES TO FRIENDS OF THE STRANGER

I. BARON MAURICE DE HIRSCH'S 100TH ANNIVERSARY..... 423
II. SIMON WOLF—In Memoriam..... 425
III. JACOB H. SCHIFF—In Memoriam..... 427
IV. LOUIS MARSHALL—70th Birthday Tribute..... 430

P R E F A C E

In venturing to bring together thirty-four papers and addresses out of over a hundred, which I have prepared during the last thirty years on problems of the aliens in America, a few words of explanation may be in order. Whatever may be the inherent merits of these studies, they at least reflect varying tendencies in the attitude towards the aliens during this 20th century, in which the writer has been privileged to participate, however humbly, as will presently be made to appear. That some of them may have some intrinsic merit was the opinion of my friend, the late Oscar S. Straus, distinguished publicist and Secretary of Commerce and Labor under President Theodore Roosevelt, who urged me to collect some of these papers in book form, and wrote to me most interestingly under date of June 26th, 1917, with particular reference to the paper reproduced in this volume from an issue of the "American Law Review" of that year entitled "The Right of Asylum, with Particular Reference to the Alien":

"I have read it with great interest and instruction. It is a very excellent and learned article, and shows a wonderful amount of research upon a very live subject. I would suggest that you send copies to a selected number of Senators and Representatives. This study may prove very useful to them in practical legislation, and especially it would defeat proposed legislation offered by those who do not know the history and development of the right of asylum. I think it was Lecky who said—nothing is so detrimental to a nation as to cut itself off from its own historic past, as the French did in their revolution. I should think you would be very well qualified to write a most interesting book entitled 'The History of Some of the Basic Elements of our Laws,' written in chapters of which this study should form one. Such a book would be of great value both as a legislative and juridical aid."

Barely a year after graduating from Columbia Law School, I became an Assistant U. S. District Attorney in the federal district which included the old city of New York, and as such had considerable experience between 1894 and 1898 in enforcing our immigration laws on behalf of the Government, particularly our Chinese Exclusion Laws. After my term of office expired, I frequently represented aliens and alleged aliens in our courts, from the United States Supreme Court down, and in a number of different States of the Union, including New York, New Jersey, Massachusetts, Pennsylvania and Michigan. Beginning in the year 1901, when the *New York Times* published two detailed papers of mine on our Chinese Exclusion laws, I have often written on immigration, naturalization and the rights of aliens for the daily and periodical press.

In 1905 I became a trustee of the Baron de Hirsch Fund, and Chairman of that organization's "Committee on Immigrant Aid and Education,"

a position I have filled ever since. This brought me in close contact with many immigrant aid societies throughout the country, and their problems, and in turn led to activity on the Board of Delegates on Civil Rights of the Union of American Hebrew Congregations for a number of years, and subsequently for many years as chairman of the Committee on Immigration of the American Jewish Committee and on behalf of the B'nai B'rith. U. S. Commissioner of Immigration William Williams' activity, beginning in 1910, in seeking to modify our system of immigration administration radically, through executive orders as Commissioner of Immigration at Ellis Island, led that year to active espousal by me of the cause of the immigrant in our courts, a course which I have since pursued continuously and diligently, and solely as a labor of love. This in turn led to frequent appearances in behalf of the aliens before committees of Congress and before governmental officials, as also before learned societies interested in the problems of the immigrants, and on the lecture platform, as the contents of this volume show. It also led to the preparation of many articles and reviews for scientific periodicals, some of which are collected herein. For want of space, some of the lengthier articles not reproduced in this volume are enumerated in a list appearing in an "Appendix" hereto.*

As indicated in the contents of this volume, I have also been privileged to participate actively in this field in the American Economic Association, the American Academy of Political and Social Science, the Conference on Immigration Policy, the National Conference on Naturalization and Citizenship, the National Conference on Social Work, The Judaeans, as adviser to the Department of Immigrant Aid of the National Council of Jewish Women, and occasionally to the American Civil Liberties Union, and latterly, by appointment of Secretary of Labor Perkins, on the Committee on Ellis Island and Immigrant Welfare. I also served in 1917 as adviser on citizenship to the Government attorneys before the Draft Boards in New York City.

I might add that I was privileged to continue my deep interest in history from college days on as an active member of the American Jewish Historical Society, of which I was a charter member on its organization in 1892, and of which I have been a vice-president for many years. Close study of the history of the Jews in the United States in its proper setting in its relation to the history of the general immigration movement to our country stimulated my interest since 1892 in the general subject, and helped to form my general point of view. No attempt is being made, however, to reprint or even to list any of the numerous papers on American Jewish history which are to be found in my contributions to the volumes of the "Publications" of that Society, or in the "Jewish Encyclopedia," nor any of my court briefs.

* This Appendix was never prepared by the author, and none is included here. The reader who may be interested is referred, however, to a comprehensive bibliography of Mr. Kohler's writings prepared by his friend, Edward Coleman, the scholarly librarian of the American-Jewish Historical Society and which will appear as part of the Society's *Publications* for the year 1935.

My purpose to reflect the changing attitudes of the past three decades towards the problems of the aliens would be thwarted, if I made any substantial changes in the text of the papers herein reprinted. I **have**, however, on occasion, added a few foot-notes, and occasionally shortened articles by omitting matter that would otherwise be redundant, because covered by other articles I reproduce.

I am indebted to the various periodicals from which I take nearly all the articles reprinted herein for kindly permitting this republication; they are listed in connection with each paper. It is my hope that some of these studies may still prove of use, and that espousal of the cause of the immigrants has not eliminated my original recognition of the rights of the Government and the Government's point of view.

1934

MAX J. KOHLER.

ACKNOWLEDGMENT

This posthumous work was not only projected by Max J. Kohler during his lifetime but every portion of its contents was actually selected by him for inclusion in the contemplated book from among his numerous writings and addresses in this field. Even the foreword by Judge Lehman was written in fulfillment of a promise made Max Kohler by his cherished and loyal friend.

When the author departed, the book still needed a little further editing. It required chiefly a more orderly grouping of the various papers under appropriate sub-heads. This finishing touch was given also as a labor of love by Mr. Harry Schneiderman, a co-worker and friend of the author. The index was prepared by Mrs. Effie Cowen Solis-Cohen. The proof sheets were carefully and lovingly read and corrected by his two sisters, Rose and Lili Kohler, and his brother, Edgar J. Kohler.

In conclusion and by way of supplement to the Author's Preface it is deemed not unfitting to reprint and preserve in this volume the following beautiful tribute to Max J. Kohler which appeared as an editorial two days after his death in the *New York World-Telegram* of July 26, 1934:

MAX J. KOHLER

In reading the formidable list of accomplishments, writings and interests assembled in the obituaries of the late Max J. Kohler one is amazed that he should have remained, nevertheless, such an inconspicuous man.

Inconspicuous, that is, to the general public. An able and successful lawyer, a tireless writer, an authority on immigration, the champion of minorities, one of the leaders of all time in his efforts for better relations between Jews and non-Jews, Mr. Kohler did his work with a scholar's reticence. He was not a pusher. He was not loud. He worked for the cause, not for personal publicity.

The death of this conscientious scholar will be a loss not merely to the Jews of the world but to American life. To a degree unthought of by the average lawyer he gave his allegiance to justice. The under dog and the outcast were the clients of his most serious attention. That he was strongly motivated by religious and racial sympathies cannot impair the fact that his goal was a freer, more liberal, more decent America.

ERRATA

The "Exhibits" referred to on pages 5 and 9 were omitted from this volume.

The reference to pp. 24-27 in the final paragraph on page 19 is to the original publications; the matter referred to is to be found on pp. 17 and 18 of the present volume.

Attention is called to the following errors in the text:

In Preface, p. viii, footnote, last line, last four words, "for the year 1935" should be read as "No. 34."

P. 22, footnote, should be *N. Y. Times* of January 7, 14, 9 and 5, 1924.

P. 53, the third line of the first paragraph should be read after the fifth line of the same paragraph.

P. 62, ninth line, "of one of" should be read as "of one or."

P. 66, the reference in the first footnote should read *Immigrants in American Review*.

P. 399, the Report of the American Jewish Committee referred to in the footnote is the twenty-fourth Annual Report, published in 1931.

PART I
IMMIGRATION

mission. The present law (Section 25) requires that decisions of Boards of Special Inquiry shall be "rendered solely upon the evidence adduced before the board of special inquiry" in the presence of the immigrant or his counsel, so that the immigrant may know what he has to meet. Departures from this requirement to the prejudice of the immigrant, are of frequent occurrence, and should be effectively prevented.

Argument: Recent judicial decisions establish the proposition that it is a denial of due process of law, which justifies judicial intervention, if evidence is withheld by the Government from the examination of the immigrant or his counsel, but is nevertheless submitted to the reviewing body or is withheld by the immigration officials from consideration on appeal, (See: *In re Can Pon*, 168 F. R. 479, C. C. A.; *Chin Yow vs. U. S.*, 208 U. S., 8; *Hopkins vs. Fachant*, 130 F. R. 838, C. C. A.; *Davies vs. Manalies*, 179 F. R. 818 C. C. A.), and where conjecture is substituted for evidence. (*U. S. vs. Wong Chong*, 92 F. R. 141, Coxe, J.) This departure from due process of law, both in hearings before Boards of Special Inquiry and on appeal is a matter of constant occurrence, to the prejudice of the immigrant who is kept ignorant of the evidence against him. Records on appeal which have been examined show that in numerous instances, members of the Boards of Special Inquiry and Commissioners of Immigration attempt to decide cases on arbitrary assumptions where, contrary to law, facts to warrant them do not appear in the record sent up on appeal and which have in reality no bases in fact. A common illustration of the denial of due process of law is the assumption that the occupation of the applicant is or is not a "congested industry," so as to make it probable that he cannot secure occupation in it after his arrival, the contract labor provision preventing his securing a position before arrival. Frequently unwarranted assumptions are made that money actually deposited and offers to secure positions are "charity" and are not made bona fide. Courts recognize the necessary limitations upon their right to take judicial notice of matters in general, especially where the matter is not positively known or is in doubt or relates to a subject which is constantly changing, (See: *Austin vs. Texas*, 179 U. S. 343, 345; *American Sulphate Co. vs. D. Gross Co.*, 157 F. R. 660, C. C. A.) It is accordingly of great importance that the immigrants be accorded due process of law with respect to all investigations relating to them.

2. *The right of the immigrant to counsel before Boards of Special Inquiry should not be denied, and the hearings should be public as recommended by the Ellis Island Commission of 1903.*

Argument: See Exhibit A for the recommendations of that Commission, and B, Brief in the Matter of Hersch Skuratowski, Point VII, pp. 37-42.

3. *The methods of hearing appeals should be improved, including the granting of reasonable opportunity to the immigrant, first, to see the evidence, and, second, to offer new evidence and submit briefs.*

Argument: Note facts involved in the group of cases in Brief in the Matter of Hersch Skuratowski, Points VIII and IX, pp. 43-46, Exhibit B.

4. *The provisions of the act of 1891, reenacted in the present law, (Sections 25 and 10), forbidding judicial review of the determinations of executive officers excluding immigrants, should be repealed in so far as they prevent judicial review of questions of law merely, but not of questions of fact.*

Argument: No other class of cases is beyond judicial review, yet personal liberty is even more precious than property rights. A serious and anomalous situation arises when, as to protection of their most cherished rights, thousands of persons are put beyond the reach of the courts, particularly when there are presented serious questions of law affecting their rights, and when the executive tribunals deciding the cases act behind closed doors. Since Revolutionary days, when the famous Massachusetts Bill of Rights was adopted, we have recognized that ours is a "government of laws, and not of men." Confusion, demoralization and injustice are bound to result, when executive action is made non-reviewable by the courts. There is no danger of the courts admitting persons really incompetent, nor even of their reviewing conflicting questions of fact previously determined against the immigrant by executive officers; the result would merely be to prevent illegal executive action, and to make executive rulings conform to law.

5. *The Secretary of Commerce and Labor and the Attorney General should jointly prepare and publish a compilation of judicial decisions and opinions rendered by the Secretary of Commerce and Labor and his legal advisers, for the guidance of immigration inspectors and the public generally.*

Argument: The purpose of this recommendation is to secure uniformity of action and correct determinations by immigration officials in accordance with law. Much uncertainty and confusion prevail among inspectors as to the proper interpretation of the law. Important authoritative decisions construing the statutes were handed down prior to the statute making administrative decisions non-reviewable, and

there have been a few judicial decisions since then dealing with cases reviewable because of alleged denial of due process of law. There have also been authoritative rulings and opinions handed down by the Secretary of Commerce and Labor and his legal advisers, (the Attorney General and the Solicitor of the Department) but these are difficult of access and widely scattered. Moreover there have been various circulars and instructions issued by the subordinate immigration officials, the legality and correctness of which, as expositions of the law, have been challenged on behalf of immigrants, but the matters have not yet been determined by the courts. It is accordingly of great importance that such an authoritative compilation as above referred to be published and distributed among immigration officials and the public at large.

No such compilations have been issued since 1899, when the Treasury Department issued a "Digest of Immigration Laws and Decisions." This has long been out of print. The fact that for over twenty years the decisions of immigration officials have been practically non-reviewable by the courts makes it all the more important on the one hand properly to educate the Government officials who pass on nearly a million applications for entrance into the United States every year, and on the other hand to enable immigrants and their friends to ascertain, before embarkation for the United States, what the requirements of our laws are. The adoption of novel, constantly changing, and controverted theories of construction of the laws by subordinate immigration officials having coercive powers over their subordinates, makes it all the more important to secure such official compilations to guide both Government officials and immigrants. In fact, both Section 1 of the Immigration Act of 1907, and the corresponding section of the Act of 1903, provide that the money received from the head-tax on immigrants should be employed in part to defray "the cost of reports of decisions of the Federal Courts and digests thereof, for the use of the Commissioner General of Immigration." This of course also contemplated publication. This express mandate of Congress, so important to the interest of thousands, has been wholly ignored. An examination of many records of exclusions shows that an appreciable and increasing number of questionable exclusions is taking place. Instructions to inspectors, secretly issued, carelessly phrased and of doubtful legality, are no substitute for such authoritative publication.

More accurate information abroad as to the purport of our laws, would deter many incompetent persons from embarking for the United

States. It appears from the Government's records, that during the fiscal year ending June 30, 1907, 65,000 persons abroad, after paying for their tickets in whole or in part, were refused passage for this country by reason of physical defects disclosed by the medical examination at the port of intended departure—five times as many as the total number of exclusions for all causes for the same period here. Such a compilation, published in various languages, would also greatly discourage the migration of persons incompetent on other than medical grounds. In fact, while the Immigration Bureau was a branch of the Treasury Department, immigration decisions were published as rendered, in the weekly "Synopsis of Treasury Decisions," subsequently bound and issued in book form annually or semi-annually; even this has now ceased, though becoming more necessary day by day, as the laws are now administered by a different Department (See Hearings before Committee on Immigration and Naturalization, House of Representatives, 61st Cong., 1st Sess., pp. 348 to 352, 356 to 360, and *passim*, hereto annexed as Exhibit C.)

6. *Appointments to Boards of Special Inquiry should be made by the Department of Commerce and Labor, and should not be limited to immigration inspectors. These officials should have adequate salaries, in order to secure efficient service.*

Argument: See, for examples, the facts developed and described in Exhibit B, Brief in the Matter of Hersch Skuratowski, especially pages 17-37.

7. *A circular letter issued by the Commissioner General of Immigration, dated June 21, 1910, as to the provisions of the law, concerning the detention of immigrants for hearings before Boards of Special Inquiry, has lately enormously increased the number of unjustified exclusions.*

Argument: The law (Section 24) provides that every alien who may not appear to the examining inspector at the port of arrival to be clearly and beyond a doubt entitled to land, shall be detained for examination in relation thereto by a Board of Special Inquiry. The purpose of this provision was merely to insure more careful and mature investigation and consideration of cases by a board of three than could be accorded by the hasty examination on the line by a single inspector. The statute nowhere makes this rule as to proof of entry "clearly and beyond a doubt" applicable elsewhere than to the examining inspector "on the line;" on the contrary, after examination "on the line" a different rule applies. In fact, the courts have all emphatically and unmistakably

held that aliens are entitled to the benefit of all reasonable doubt as to the right of entry, and that our Immigration Laws, like all laws in restraint of liberty are to be fairly and liberally construed in favor of individual liberty. (Moffat vs. United States, 128 F. R., 375, 378, C. C. A.; Tsoi Sim vs. United States, 116 F. R., 920 C. C. A.; Japanese Immigrant Case, 189 U. S., S. S. 100; Lau Ow Bew vs. U. S., 144 U. S., 47, 59; Rodgers vs. U. S., 152 F. R., 346, 350 C. C. A.; In Re Tong Tan, 161 F. R., 618, Aff, as to Can Pon in 168 F. R., 479; Botes vs. Davis, 173 F. R. 996; Lieber's Hermeneutics (3rd Ed.) pp. 128-9, 137; Harten vs. Goldstein, 20 App. Div. 203, 206; Am. & Eng. Ency. of Law (2nd Ed.) Vol. 26, pp. 661-2, 659, 646-8; Coffin vs. U. S., 156 U. S., 432).

The circular letter in question emphasizes with much detail the necessity for proof before the inspector on the line as to the immigrant's being "clearly and beyond a doubt entitled to land," but makes no reference to the fact that such rule of proof does not apply before the Board of Special Inquiry. Consequently many inspectors sitting on Boards of Special Inquiry conceive it to be their duty in this capacity as well, to exact proof clearly and beyond a doubt in default of which they order deportation. Even if this oversight be inadvertent, it must be remembered that inspectors to whom the circulars were addressed are not lawyers, and the Department has not rectified the oversight by a supplementary circular.

This circular is entirely too harsh and rigid even as an exposition of the law of burden of proof to be borne by the alien, to secure admittance without detention for the hearing before the Board of Special Inquiry. After a general statement as to alleged unauthorized leniency in primary inspection in the past, inspectors are instructed to make particular inquiry into any element of assistance in each case and as to the alien's occupation, his physical condition, his particular destination, the likelihood of his obtaining early employment at his occupation, the amount of funds at his command, etc., and the circular then goes on to say "the inspector must not leniently *conjecture* that the alien will be able to get along, but such fact *must appear clearly and beyond a doubt.*" In view of the fact that the contract labor provision expressly forbids aliens securing positions before coming over, it is in almost every case possible for an unlearned inspector to hold that the mere fact that a man has no position renders his ability to get one a mere matter of conjecture, and that he may properly be held likely to become a public charge. By this process of reasoning, he elevates a mere possibility of

not getting work into a likelihood to become a public charge, whereas, in a country like ours where labor is needed, no capable, healthy person, willing to work, can rightfully be held likely to become a public charge. In this connection, a very able editorial from the "N. Y. Evening Post" of July 16, 1909, is very much in point:

"Once a foreigner has shown that he is able bodied, free from contagious diseases, and neither a criminal, an anarchist, nor polygamist, nor certain to become a public charge, he has made out a *prima facie* case for his admission.

* * * As to the fear of letting in aliens to become public charges upon public charity, it seems to us that the provision of the law which orders such immigrants back within three years after their arrival, should encourage clemency at Ellis Island, rather than harshness. If the immigrant who falls into pauperism can be gotten rid of within three years, why should our immigration officers speculate excessively upon the chances of an immigrant becoming a pauper? Here again he should be given the benefit of the doubt—given a chance to show that what this country offers its newcomers is not poverty, but a living."

Moreover, this circular is in the respects specified similar to one issued by Commissioner of Immigration Williams, of the Port of New York, on June 15, 1909, in which in dealing with determinations as to entry, and not merely for detentions for the Board of Special Inquiry, he instructed his subordinates: "*It is necessary that the standard of inspection at Ellis Island be raised. Notice hereof is given publicity in order that the intending immigrants may be advised before embarkation, that our immigration laws will be strictly enforced.*" As pointed out above, the courts have established the rule of law that immigration acts must be fairly and reasonably construed in favor of immigrants and not rigidly and harshly against them.

The legal advisers of the Department of Commerce and Labor have on occasions decided adversely to the immigrant on points of law where they have themselves regarded their opinion as of doubtful validity, and this despite express recognition of inability to secure judicial review. A typical illustration of this is afforded by the remarks of the Solicitor of the Department of Commerce and Labor in Decision No. 111, p. 15 in the so-called "South Carolina Laborers' Case."

8. *The assisted immigrant and prepaid ticket provisions of the statute (Section 2), should be amended by omitting the confusing "burden of proof" provision. The provision should be recast so as to carry out the*

intent of the framers by confining it to contract labor cases and cases of immigrants whose passage has been prepaid by "corporations, associations, etc."

Argument: The Committee of Congress which reported the original "assisted immigrant" provisions of 1891, (Report of Select Committee on Immigration, January 14, 1891, 52d Cong., 2d Sess., House Report No. 3472, p. IV.) said wisely:

"Assisted immigration is of two kinds: Those assisted by friends from this side of the water is the best class of immigration, for they have relatives or friends here who will care for them in their untried surroundings. But the immigrant assisted from the other side usually has no friends here, and if any on the other side, their chief interest is in getting rid of what is likely soon to become a burden. The assisted ticket immigrant should not be made an excluded class, but our experience has been so unfortunate that it is prudent to have him show affirmatively that he does not belong to one of the excluded classes."

The "assisted immigrant" provisions of the law are still based on this broad-minded premise. They merely aim to exclude undesirable persons brought over by contract-labor employers, seeking to secure cheap labor at the expense of home labor, and at scales of wages below our prevailing rates, and undesirables whose passage was paid by a foreign government, corporation, etc. Again the law is merely regulative and only imposes the burden of proof upon the immigrant of affirmatively showing the right of entry, except where such employer of contract labor or foreign state or organization has paid for the ticket or passage in whole or in part.

The purpose of these provisions must be held in mind in arriving at their proper construction. Paupers, *i. e.*, recipients of assistance for their support from the state or some division thereof are independently excluded, and the intent of the law is that in addition, persons unable to or barely able to support themselves abroad under normal conditions, and whose immigration was aided by foreign governments or charitable organizations in the manner specified are questionable acquisitions. Such statutes, reasonably construed, do not forbid even the part payment of passage-money of self-supporting persons overwhelmed by some sudden calamity, like the Sicilian earthquake or the present day Russian persecution, or such forms of persecution as led to the Puritan settlement of New England, the Catholic settlement of Maryland, the Quaker settlement of Pennsylvania, or the Huguenot emigration to South Carolina. Much less do they forbid assistance rendered to victims of perse-

cution, other than the payment of passage in whole or in part. The exodus of such unfortunates, suddenly and unwillingly compelled to seek new homes in a land of promise, does not, even *prima facie*, indicate likelihood to become a public charge. It would shock the American people, inexpressibly, however, to know that the unfortunate victims of the Sicilian earthquake were, in a number of instances, deported from our shores as "assisted immigrants" under a blundering administration of our laws, solely because they received some of the aid their sympathizing fellowmen rushed to tender to them in their terrible, sudden distress. Similarly, the able-bodied, industrious Jewish victims of Russia's fiendish fanaticism cannot be lawfully excluded under existing law, even if they have been aided in paying their passage by sympathetic friends or charitable organizations. Much more is this true when such aid has not had any relation to payment of passage.

Jefferson in his Presidential message of 1801, established our American principle in the famous words: "Shall oppressed humanity find no asylum on this globe? . . . might not the general character and capabilities of a citizen be safely communicated to everyone manifesting a bona fide purpose of embarking his life and fortunes permanently with us . . . ?" This doctrine found a permanent place in our statute books at the close of a former "Know-Nothing" era, when Congress adopted a resolution still in force as Section 1999 of the U. S. Rev. Statutes, which provides that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the right of life, liberty, and the pursuit of happiness and in the recognition of this principle, this Government has freely received emigrants from all nations and invested them with the rights of citizenship." The circular of the Commissioner General of Immigration, referred to above, was intended and has in fact led to many unwarranted exclusions on the score of "assisted immigration," in violation of these principles. Commissioner Williams' arbitrary circular letter of June 28, 1909, (See Exhibit D) declared among other things that "in most cases it will be unsafe for immigrants to arrive with less than \$25 (besides railroad ticket to destination)" and that "immigrants must in addition of course, satisfy the authorities that they will not become charges, either on public or *private* charity." He defined his understanding of charity in the following extraordinary terms: "*Gifts* to destitute immigrants after arrival [will not] be considered in determining whether or not they are qualified to land; for, except where such gifts are to those legally entitled to support (as wives, minor children, etc.) the recipients stand here as objects of

'private charity.' " (See reprint in Report of Commissioner General of Immigration, 1909, pp. 132-3.)

Similarly, assistance promised to immigrants by responsible philanthropists or societies (other than employers of contract labor) to be rendered after landing, is not merely not illegal, but must be considered in determining if they are "likely to become public charges." It is a serious misconstruction of the law to regard such assurances of relief as in themselves making immigrants likely to become charges on private or public charity.

The able editorial in the *New York Evening Post*, (quoted above in part) in criticism of Mr. Williams' \$25 test, has broader applicability and is relevant also with respect to alleged "assisted immigrant" cases. It said:

"The money test can never be anything but tentative. In incapable hands it may become an instrument of injustice. It might be fair to call for a small sum of money from the Italian immigrant in ordinary times; it would be unjust to exclude the refugee from stricken Calabria, or Messina, because he has nothing to show but his poor bundle of clothes. The victims of Russian massacres are entitled to greater consideration than the ordinary Russian immigrant. The Armenian refugee from Adana or Tarsus has claims upon us that rise above the twenty-five dollar rule."

The prepaid ticket provision of the law, the purpose of which is salutary, is, as indicated above, so loosely phrased as to create much hardship and injustice. The law is indefinite and uncertain as to what is meant by a "person whose ticket or passage is paid for with the money of another," and as to what is meant by the general term "who is assisted by others to come." In addition, it establishes a special burden of proof, on the immigrant, different from any other prohibitions of the statute. This is decidedly confusing, since the courts have held that the burden of proof is upon the immigrant in any event. In practice, inspectors frequently act on the assumption that the immigrant has a full knowledge of our immigration laws and regulations and must, without interrogation, at his own instance and despite his ignorance of our language and laws, satisfy the requirements of the law of proving affirmatively that he does not belong to one of the excluded classes, though information on the requirements of the law be made inaccessible to him by the inspectors' method of hearing, which often excludes counsel. Moreover, no such obligation as that to meet the special burden of proof ought to be thrust upon an immigrant intelligent enough to pur-

chase his ticket here or have his relatives do so, instead of dealing with more irresponsible ticket agents and "runners" abroad.

9. *The provision of the law concerning likelihood to become a public charge should not be construed or modified so as to prevent the continuance of the established and salutary practice of permitting the heads of families to come to the United States, in order to establish themselves here as breadwinners and to provide homes for their families before sending for them from abroad.*

Argument: The hardships attending the separation of members of families has attracted widespread attention. In efforts to prevent these hardships, immigration officials have recently adopted the practice of inquiring into the size and circumstances of the families of those male immigrants who leave their families abroad. In such cases, immigration officials, (basing their actions presumably upon a desire to prevent the exclusion of the members of a family whose head has already emigrated or intends emigrating to the United States) are making these inquiries with a view to speculating as to whether or not the size or condition of the families abroad is likely to render them or the heads of the families coming here public charges. The authority to make such inquiries into matters outside of the jurisdiction of the United States, involving questions as to cost of living and assistance abroad, wholly beyond the possible range of knowledge of immigration officials is quite doubtful. (See *American Banana Co. vs. United Fruit Co.*, 213 U. S. 347.) The history of immigration to this country demonstrates that in hundreds of thousands of cases the process has been for the male head of the family to come over first, to learn the conditions in the new country and prepare a home for his family. Any administrative regulations, or interpretations of the law which prevent this salutary process would be unnecessarily cruel and would result in great detriment to this country itself. Had such a practice been in vogue hitherto, it would have deprived this country of many of its most valuable and enterprising citizens. Hardships resulting from exclusions affecting separation of families can readily be avoided, first, by making the requirements of our laws better known, here and abroad, as suggested above, second, by requiring thorough examinations (physical and other) by the steamship companies at the port of embarkation, and third, by the free exercise of the power to take bonds in all doubtful cases.

10. *The discretionary power under the statute (Sec. 26) lodged with the Secretary of Commerce and Labor to permit landing of immigrants "upon the giving of a suitable and proper bond or undertaking," should*

be freely exercised. Under present regulations this discretionary power is seldom availed of, though it is of great service in many cases and essential in others to avoid unwarranted hardships, if not cruelty.

Argument: Despite the comprehensive language of Sec. 26 of the present act, giving the fullest discretionary power to the Secretary to admit immigrants under bonds, unless suffering from a loathsome or dangerous contagious disease, the Department rarely takes bonds, except to avoid separation of families. Cases, accordingly arise involving the grossest hardship and oppression, but the courts have declared themselves powerless to review the discretion of the Department (U. S. ex rel Chanin vs. Williams, 177 F. R. 629, C. C. A.). The right and wisdom of freely taking bonds in doubtful cases was strongly emphasized by the Government through Secretary Fairschild in an able opinion some years ago (Treasury Decision, No. 7698), and has also met with strong judicial approval (U. S. vs. Lipkis, 56 Fed. Rep. 427). An adequate bond protects not merely the Government, but makes it to the surety's interest to prevent his charge from becoming a "public charge." The objection to bonds is placed chiefly upon the ground that sureties often are or become irresponsible. This is purely a matter of administration, as the law provides specifically that bonds may be taken by the Secretary of Commerce and Labor "in such amount and containing such conditions as he may prescribe."

It is further urged that bonded immigrants occasionally disappear or change their names, so that the liability of bondsmen cannot be established. This extremely rare contingency might have weight under some circumstances, but it may be readily guarded against. For instance, one method would require a form of bond declaring a forfeiture, unless the alien periodically report, personally or otherwise, during a fixed time limit, to some designated government official. This objection also resolves itself, therefore, into a mere matter of efficient administration.

11. *The provision as to admission of children under sixteen years of age unaccompanied by their parents, has lately led to many oppressive and unwarranted exclusions and should be modified.*

Argument: The law establishes as an excluded class "all children under sixteen years of age unaccompanied by one or both of their parents at the discretion of the Secretary of Commerce and Labor or under such regulations as he may from time to time prescribe." Under this statute, the Secretary very properly established the rule, that children shall not be permitted to enter the United States if it appears, or the circumstances indicate, that they are to be placed in forced or "padrone" ser-

vitute, or in any employment unsuited to their years, which implied that in other cases, they should be freely admitted. It is now the general practice to exclude such immigrants even where the matters referred to in the Secretary's rule are affirmatively and satisfactorily disproved. In fact, Commissioner Williams, in a recent circular letter entitled "Information as to the Immigration Laws and Their Execution," says that "all children under sixteen, unaccompanied by either parent will be held at Ellis Island for special investigation and (a) where the parents are abroad, they will, as a rule, be deported. If admitted at all, this will be only on bond, but the Secretary will not admit even on bond, except in instances presenting in his opinion special merit. (b) Where it is claimed that the parents are in the United States such children will usually be held at Ellis Island until the parents have been heard from." It is natural that under such instructions most children are certain to be excluded. This subject presents two features therefore: (1) the statute has vested the Secretary, not the Commissioner, with power to regulate this matter by rule, and (2) the regulation established by the Secretary, pursuant to law, indicates that such children are eligible for entry except in the cases therein referred to.

The Commissioner's rule obviously is inconsistent with the regulation, and effects the deportation of young children who came over in reliance upon the Secretary's regulation, and who are admissible pursuant to it. Another, though less important question is whether it was intended to limit the admission of children to the extent the Commissioner's rule attempts, in view of the hardships and dangers attending such exclusion, especially where young girls are involved.

12. *Boards of Special Inquiry and immigration officials in general should keep correct and full records of all detention cases coming before them; such records to be open at all times to inspection by parties in interest who ought to have the right to make copies of the records.*

13. *Where decisions of the Boards of Special Inquiry excluding immigrants are affirmed on appeal, the immigrant or his counsel should have at least 48 hours' notice prior to deportation.*

Argument: Great hardship results from the common practice now prevailing of delaying determinations until immediately before the vessel sails on which the immigrant is to be deported. Relatives and friends are prevented even from bidding farewell to excluded persons, or from providing for their maintenance, and comfort on the voyage. Moreover, efforts to make application for admission on bond after dismissal of appeals, which the law sanctions, are thus thwarted. Placing in the

hands of men unlearned in the law a facile means of avoiding a review of decisions charged to be illegal and oppressive, has been in many cases a temptation to which they have unfortunately yielded.

14. (a) *Medical examiners, in accordance with law, should report strictly upon the medical facts of each case, and should not include in their reports any other statement whatsoever.*

(b) *Physicians of the Marine Hospital Service should be instructed in official circulars as to their duties, so as to prevent divided responsibility for deportations because of mental or physical defects.*

Argument: At present, in very many cases, the physicians certify to trivial defects, such as the arbitrary estimate of three pounds under weight and the like, and to defects and non-contagious nor dangerous diseases having no relationship to the likelihood of the immigrant's becoming a public charge, particularly in the cases of women and children having others to support them. These certifications frequently take the form of sweeping generalizations unjustified in fact, like "lack of physical development," "lack of muscular development." They wholly ignore the physical and mental vigor of the immigrant from Eastern Europe whose slight physique often is misleading to superficial observation. The medical inspectors, unless improperly instructed, in many cases would not assume the responsibility of reporting that the defect is such as to tend towards the immigrant's becoming a public charge. The Boards of Special Inquiry, however, especially at present, are naturally greatly influenced by such certifications, which have little significance in fact. Under the present rigid and enhanced medical tests, there is no occasion for the introduction of such doubtful expedients. The result is a responsibility for exclusions divided between the medical examiners and the Boards of Special Inquiry, with actual responsibility upon neither.

(c) *The present statute making decisions of medical officers final even as to alleged physical defect being likely to affect the immigrant's becoming a public charge, should be modified by making the decisions reviewable by appeal on such points.*

Argument: Even under the theory of the present statute, the question whether alleged physical defect is likely to affect the immigrant's becoming a public charge is a quasi-judicial question and not really a medical one, and ought to be made reviewable on appeal. In addition to this, however, certain diseases, like trachoma, favus, etc., are classed as "loathsome or dangerous contagious diseases," while in point of fact there are stages of them easily curable and far from loathsome or dan-

gerous. The indiscriminate use of terms applicable only to certain stages of a disease has been protested against by the medical world and often by the courts. (See *In re Di Simone*, 108 F. R., 942; *U. S. vs. Nakashima*, 160 F. R. 842, C. C. A. See also articles on Trachoma by Dr. Alger in *N. Y. Med. Journal*, April 9, 1904; by Dr. Nydegger, *U. S. Marine Hospital Service*, *N. Y. Med. Journal*, Sept. 17, 1904; and by Dr. H. F. Hansell, in *N. Y. Med. Journal*, March 16, 1907.) The Government's interests would not be jeopardized if appeal, even on those points, were permitted to the Secretary of Commerce and Labor, who can be depended upon to protect the public interests against what are actually "loathsome or dangerous contagious diseases," and suspend ruling on admission pending treatment of the applicant in a hospital, Governmental or otherwise, at the expense of the applicant or of his family.

15. *The exemption from exclusion under Section 2 of the existing law of "persons convicted of an offense purely political, not involving moral turpitude," should be amended by the omission of the words "not involving moral turpitude."*

16. *The adoption in practice of such administrative reforms as are herein referred to will render it unnecessary to press the recommendation, tentatively made to this Commission, that the words of the present law "likely to become a public charge," be limited and defined.*

III.

1. *In answer to the inquiry, "What can the National Government do to assist immigrants on their arrival at United States ports?" we submit that by increasing the scope of the Government's own Information Division, and by Government cooperation with similar bureaus, maintained by States or by private charitable organizations, it can encourage immigrants to go to districts where they are most likely to prosper, and thus be judiciously distributed throughout the country.*

Argument: The federal act of August 13, 1882, under which the national government took over the regulation of the subject of immigration, expressly provided that the head-tax collections should be paid into the United States Treasury, and constitute a fund to be called the "immigrant fund," to be used not merely "to defray the expense of regulating immigration," but also for "the care of immigrants arriving in the United States, [and] for the relief of such as are in distress;" and it further expressly authorized the Secretary of the Treasury to make contracts with State officials for the purpose, among others, of

“providing for the support and relief of such immigrants therein landing as may fall into distress or need public aid.” The obvious purpose of this provision was thus to compensate the seacoast States for the revenues which they were deprived of and which until then, they had collected by a head-tax on immigrants. These States had in part freely used these revenues for the benefit of immigrants falling into temporary distress after landing. (See *Edye vs. Robertson*, 112 U. S. 580.) The statutes and judicial decisions of New York and Massachusetts show that the theory underlying these statutes was that, while people having an established residence in various countries or municipalities had a right to share in the “poor relief” funds of such localities, to tide them over periods of temporary distress, newly arrived immigrants had no such “established residence,” and that it was accordingly fair and just to collect a head-tax from immigrants and have such immigrant fund employed in part for the relief of immigrants requiring aid. In the administration of these laws, the States moreover recognized that individuals might suddenly and temporarily require a little public relief during hard times in case of sickness or other calamity, which did not make them paupers, and subject to the legal disabilities of paupers. (It is a striking contrast to this to note our present procedure by which the receipt of merely free hospital treatment, at the expense of state or city, within three years after their arrival by aliens ignorant of the consequences, is construed to justify their deportation on the theory of their having become paupers or public charges.) When, in 1891, the federal government provided for the appointment of its own officials to execute the immigration laws, abolishing the employment of state officials, much of the expense attached to the enforcement of these laws became a direct charge upon the federal government, and all subsidies or payments out of the Immigrant Fund to the States ceased. In fact, however, the States and subdivisions thereof, continued to bear a portion of the expense arising from the care or relief of needy aliens, though the national government ceased to contribute in reimbursement therefor. It was accordingly mere justice for the Government to establish an “Information Division” at its own expense, by Section 40 of the Act of 1907, “to promote a beneficial distribution of aliens admitted into the United States among the several states and territories desiring immigration,” and to concern itself to this extent at least with the progress of aliens after their landing and admission to this country.

This Information Division has already done admirable work, and it should be developed by the Government and not handicapped and em-

barrassed. The statute in question, moreover, in terms, contemplates governmental aid to similar State agencies. This should be further extended to include State and municipal Immigration Bureaus and the like. The Government should also cooperate with various quasi-public charitable organizations which render important public service in their efforts to advise immigrants as to place of settlement and facilities for getting work at prevailing rates, and in looking after them and effecting their distribution through the country. Such disinterested benevolent agencies are entitled to assistance and encouragement from the Government, as they render at their own expense, quasi-governmental service. As was so well said by Attorney General Wickersham (27 Opinions 497):

"It is certainly not against the policy of the law to send an agent into a foreign country to arrange for the transportation of aliens whose emigration has already been determined upon, and to secure their settlement in a section of the country where the industrial conditions are such that their presence is badly needed. As appears from an inspection of the reports of the Commissioner General of Immigration the most difficult problem in connection with the immigration question, is to secure a proper distribution of the immigrants. . . . Manifestly any plan which has in view a distribution of the alien immigrants among the rural population and to procure their services in the development of industries in which labor is deficient and thus remove them from competition with American laborers in those vocations which are overcrowded, is in entire accord with the spirit of our immigration laws."

The work of the Galveston "Jewish Immigrants' Information Bureau" is of practical interest in this connection. It aims at preventing the congestion of immigrants of the Jewish faith in the large northern and eastern cities by arranging for their distribution from Galveston throughout the West and Southwest, instead of going to New York and other northern and eastern cities. The work is based on the theory that the distribution would be best effected at the home of the immigrant, instead of from large American cities where relatives and friends can easily prevail upon them to remain. For this purpose, a number of immigrants, mainly men, sailed from Bremen to Galveston under the auspices of the Jewish Territorial Organization and the Galveston Bureau, the Galveston Committee and affiliated societies aiding them to find suitable work in their lines of occupation in the West and South-

west. The voyage is longer and more expensive, but the public-spirited interest of the Bureau through affiliated committees and societies, has succeeded in finding suitable positions for the immigrants after arrival, and has done noble work in distributing these immigrants who would have otherwise landed and remained at the eastern ports.

Accordingly the Government and especially the Bureau of Immigration should cooperate with and aid the work of such organizations as the Galveston "Jewish Immigrants' Information Bureau" and not hinder their beneficial activities. It should cooperate with and aid the work of such organizations as the Industrial Removal Office which has removed to the interior of the country away from congested districts, over 50,000 Jewish immigrants since 1901, and made them self-supporting workers in their various callings in the interior of substantially every state of the union. (See the account of the society's activities in the argument of its former president, Cyrus L. Sulzberger, Esq., Exhibit C, Hearings before House Committee on Immigration, 61st Cong., 2 Sess., pp. 290 et seq.) The Government should also encourage the work of fraternal organizations like the Independent Order B'nai B'rith, which, through lodges and members scattered all over the country have furthered the beneficent work of the organizations mentioned. The Government should also cooperate with and aid such organizations as the "Jewish Agricultural and Industrial Aid Society," which induces Jews to take up farming and aids them in that vocation, being in turn aided by the "Baron de Hirsch Agricultural School," at Woodbine, N. J., and the Doylestown "National Farm School," presided over by Rev. Dr. J. Krauskopf. The Baron de Hirsch Fund, in addition to subsidizing several of these organizations, maintains a free "Trade School," for resident Jewish young men in New York City.

The Government should in like manner cooperate with and aid the work of such organizations, of all denominations and nationalities, as look after the housing and employment of immigrants and maintain agents at Ellis Island and elsewhere. It should also aid the various well-managed Employment Bureaus, maintained by commendable private charities. The Secretary might profitably convene from time to time, conferences of representatives of such organizations, as the Department has done in other matters, and advise with them as to measures calculated to advance their common ends, and secure their recommendations before making changes in the regulations or recommending amendments of the law. (See Report of N. Y. State Commission of Immigration, March 3, 1909, Exhibit E), which made important recommendations along these

lines. These suggestions were in the main enacted into law by Chapter 514 of the Laws of 1910, of the State of New York, establishing a Bureau of Industries and Immigration. (See also the paper on "Protection of the Alien," by Miss Frances A. Kellor, formerly Secretary of the North American Civic League for Immigrants, now the head of the N. Y. State Bureau of Immigration, in the recent publication of the Young Men's Christian Association Press, 1910, entitled "The Immigrant and the Community," Exhibit F.)

IV.

In answer to the inquiry: "What can the National Government do to promote the assimilation or Americanization of immigrants," we direct attention to the work of various Jewish organizations, referred to in the Hearing before the House Committee on Immigration, (61st Congress, 2nd Sess., March 11, 1910, pp. 296, 301-3, 305-6, 339, 344-6, 354, 363.) which indicates that the Government can do much, both directly and through stimulating and aiding other organizations.

The United States Commissioner of Education should issue Bulletins directing the attention of local education boards to the admirable results accomplished in the Americanization of children and adults by private philanthropy, notably, the Baron de Hirsch Fund, in maintaining special classes for immigrants, day and night. The Baron de Hirsch Fund has for nearly twenty years subsidized such classes at the Educational Alliance in New York, which have been so successful that the City has recognized their value and has now taken them over for the benefit of all denominations. This Fund subsidizes similar classes in Boston, Brooklyn, Philadelphia, Baltimore, Chicago, St. Louis, Pittsburgh, and Cleveland. Similarly, classes in Civics and American History have been maintained by the Educational Alliance in New York and many other public and private organizations have engaged in similar work. The admirable results accomplished are not, however, as widely known as they should be, and it is within the province of the Government to promote such work by disseminating information concerning it. In the Territories it should itself establish similar classes.

Efforts at distribution, such as have already been referred to, (pp. 24-27) will also hasten the accomplishment of this end, though in the larger so-called "congested" districts, this work of Americanization and assimilation, has been developed more fully than in less thickly populated sections. By an intelligent cooperation between the U. S. "Information Division" and the States, the importance of overcoming congestion in

large cities, and the best methods of doing so, may also be emphasized. In fact, the New York City Board of Education, to aid in providing adequate facilities for the education of immigrant children, has just requested periodical information from the federal immigration authorities as to the number, age and prospective residence of alien children arriving at the port of New York. (See: Exhibit E, Report of Commission on Immigration of State of New York, pp. 93-109.)

It ought, however, to be remembered that the great force for assimilation and Americanization is in the immigrants themselves. The Russian immigrants for instance have invariably cut loose from their oppressing native country and have come here determined to cast their lot with us. Their children are abnormally eager for our schooling and it will be found that the only stimulus really required for them is sitting or even standing room in our schools. They have no wish to look back. Their eager anticipation is to become American citizens. Even the older people who acquire the English language with greater difficulty have already partially Anglicized their native Yiddish.

V.

CONCLUSION

In conclusion, we desire to renew the opposition to sundry restrictive bills and amendments now before Congress, as explained by our representatives in the hearing before the House Committee on Immigration and Naturalization on March 11, 1910, and submitted herewith as Exhibit C.

For the reasons there stated, we, as American citizens, actuated by a desire to preserve the best traditions of this country as an asylum for the able-bodied citizens of other countries who suffer from oppression and persecution, and sincerely believing that the addition to our population of intelligent, industrious and moral persons, will greatly increase our national productiveness and general prosperity, emphatically oppose amendments to the law which

- (1) increase the Head-Tax, (Exhibit C, pp. 276, 278-9, 317, 338.)
- (2) repeal or modify the bonding provisions, (*Ibid.* p. 352-3.)
- (3) establish a literacy test, (*Ibid.* pp. 276-7, 280-1, 286, 303-5, 324-5, 337-8, 353-4.)
- (4) prescribe physical examinations for immigrants, such as are prescribed for admission into the U. S. Army, (*Ibid.* p. 323.)
- (5) establish a monetary requirement, (*Ibid.* p. 322.)

(6) require "moral certificates" for admission, (particularly from Russian refugees), (*Ibid.* pp. 325, 346.)

(7) abolish the Information Division, (*Ibid.* p. 275, 290-5, 342-4.)

(8) establish as an excluded class, persons "found" to be "economically undesirable" persons, (*Ibid.* pp. 287, 321-2, 346.)

(9) require all aliens to secure registration certificates under heavy penalties, (*Ibid.* pp. 318-21.)

(10) increase the period to five years (now three) within which deportations may be ordered on the ground of "public charge," (*Ibid.* p. 279.)

(11) establish a race or color test for admission of aliens, contrary to the fundamental principles of our Government and in violation of treaty rights (*Ibid.* pp. 308-10, 316, 326-30.)

THE NATIONAL QUOTAS LAW*

The general feeling of indignation at Germany's course less than a decade ago in treating her treaty obligations as mere "scraps of paper" suggested that civilization would be more mindful thereafter of the duty of keeping treaty faith. But her actions toward Belgium and our country were sought to be explained—though they could not be justified—by her bona fide conviction that they were indispensable for winning the war, on which she had staked her whole future. In the United States, however, we now suddenly encounter an unmistakable, and even avowed, plan on the part of the House of Representatives Committee on Immigration deliberately to violate our treaties with almost every country in the world, and for what, despite unconvincing special pleading, is a mere mess of pottage.

We have treaties with almost all the world, expressly recognizing our obligation to receive their subjects not coming within the class of physically, mentally or morally diseased, or paupers or likely to become paupers, or contract laborers, and to grant them not mere right of residence here, but all the non-political rights of our own citizens in general. In almost every case where a treaty contains no such express clause it adopts specific provisions from other treaties, by clauses granting their subjects the rights of the most-favored nation. We have, moreover, special immigration treaties or understandings with certain countries, such as China and Japan, expressly authorizing their non-laboring classes, at least, to come over and settle here under similar guarantees, together with their families.

PROTESTS UNHEEDED

On the faith of such treaties millions of males have come over here, entitled to remain and to have their wives and minor children join them here, for the courts have emphatically held that it is an incident of such treaty right to have such non-diseased near relatives join them here. (U. S. *vs.* Mrs. Gue Lim, 176 U. S., 459; *ex. p.* Fong Yim, 134 Fed. Rep., 938; U. S. *ex. rel.* Gottlieb *vs.* Commissioner, 278 F., 564, *aff.* 285 F., 295.) England, Italy, Spain, Greece, etc., vehemently protested against inhuman provisions of our quota law of 1921, denying elementary rights of this and similar character, and the Immigration

* *New York Times*, January 9 and January 14, 1924.

bill reported by the House Committee last February properly took wives and unmarried minor children of resident aliens who had been here two years and at least one year declarants for American naturalization out of the quota limits. The new Johnson bill, now pending, however (under Secretary Davis's new draft bill), puts such wives and children of residents back again, as seen, under modified quota limits (after the committee had plumed itself on its humanity in its report last February), so that it will be years before hundreds of thousands of wives and minor children of American residents can join them.

The protests of the foreign Governments were also directed at the unprecedented barbarous procedure involved, under which unfortunate immigrants were deported merely for excess of the annual or even monthly quota of their nationality, though it was absolutely impossible for them to ascertain beforehand whether they would be admissible or not. Such heartrending cases of deportation occurred in spite of treaties granting due process of law on application to enter, because of the vagueness of the law itself, the premature application of the law to aliens who had left Europe before its enactment. Even the racing of steamers with each other to get their passengers in ahead and let others suffer, the device of having vessels leaving later than others, nevertheless getting their passengers over—though in excess of quota at embarkation—by making unannounced nearer ports, and that of halting outside our harbor lines till midnight ushering in the new month, under penalty of deportation for thousands, however, if the vessel got in five minutes earlier than midnight, because of variances in clocks! Even penalties for steamship companies for neglect of ordinary precautions in this regard were omitted in the original much-vaunted Quota Act of 1921.

The administrative power to relieve against such incalculable hardship, by admission under bond or the like, was exercised arbitrarily, haphazardly and whimsically, with the result that thousands were inhumanely deported who had burned all their bridges behind them. Fortunately, at least this form of denial of the treaty "rights of man" and of "due process of law" will be terminated, if the appropriate provisions of the new bill and Secretary Davis's Draft bill be enacted, making the quota a limitation upon issuance of consular certificates abroad only. Similarly, another amendment gives husband, wife and minor children the same nationality on landing together, though born in different countries.

NEW BILLS VIOLATE AGREEMENTS

But the new Johnson bill and the measure reported last year do at least three things of a most sweeping character, in absolute and indefensible violation of treaties—for it is settled that our treaties with foreign countries do not authorize such a harsh and discriminatory measure as arbitrarily limiting admissions to small percentages of population of particular nationalities according to the early United States census of 1890, instead of that of 1910 (which was employed in the act in force) or the still later census of 1920. Nor do they authorize any “quota” limitations. As shown in my first article, Italy’s quota, for example (despite her treaty with us), is thereby reduced from the present annual quota of 42,057 to 3,912, and to 391 only per month. Poland’s annual quota—including a majority of the Jewish immigrants—is reduced from 21,076 to 5,156 only. Such course, too, is adopted under insulting and humiliating theories of superior race value and selection, into the bargain!

Secondly, in contrast to this, and despite express grant of “all the rights of the most favored nation,” immigrants who have resided continuously for seven years in Canada, Mexico, Cuba or any Central or South American country, and their wives and unmarried minor children, can enter as they please, regardless of any quota, and despite greater opportunity to smuggle in excess quota immigrants over our long borders.

The third item, the abrogation of the “gentlemen’s agreement” with Japan and the violation of our treaties regarding other Asiatics, will be considered later. The House committee report which accompanied February’s bill expressly insists on avoiding absolutely all treaty regulation of immigration, and upon violating all our treaties with foreign countries, so that Congress, and not the treaty-making powers, shall control these delicate matters. The report frankly adopts the views of Representative Box of the committee, as follows:

“The President’s constant contact with delicate and difficult questions of our foreign relations, and the necessity of maintaining cordial diplomatic relations with foreign countries, expose him and his advisers and agencies to the constant tendency toward too great liberality in immigration regulations. The President can make such a treaty with the approval of two-thirds of one branch of Congress.”

It is, of course, undeniable that measures like the Johnson Immigra-

tion bill, with its proposed use of the obsolete 1890 census as the quota basis, seek arbitrarily to check the natural flow of immigration, and overwhelmingly curtail the so-called "new immigration" coming chiefly from Southern and Eastern Europe. It takes no account of the present relative populations of the different European countries, and is obviously an effort to establish relative race values.

This kind of legislation emanated from the Senate Immigration Committee, which drafted the first quota act, and was dominated by Senators Colt, Dillingham and Lodge, all of New England, and interested in promoting Republican political ends there. Until our own day, New England received a comparatively negligible number of non-English immigrants, and its attitude was aptly characterized by Senator Maclay in the Senate in a debate in 1790 on a pending naturalization bill, when he said: "We Pennsylvanians act as if we believed that God made of one blood all the families of the earth; but the Eastern people seem to think that he made none but New England folks."

In line with this theory, some doctrinaire Yankee economists and stump-speakers, unfamiliar with our nation's real history, have contended that when the beginnings of our national institutions were laid, our country was peopled by "colonists * * * Protestant in creed, physically a homogeneous race * * * of a decidedly English type * * * upon which all subsequent additions must be regarded as extraneous grafts." When, however, we turn to the investigations of American historians, we find on the contrary, in the language of George Bancroft, confirmed by later thorough investigations and adopted by Professor Ripley—that "the United States were severally colonized by men in origin, religious faith and purposes as varied as their climes * * * for in the entire thirteen colonies at the time of the Revolution * * * one-fifth of the population could not speak English and one-half at least was not Anglo-Saxon by descent." That we never since have had such difficult problems in assimilating the immigrants as were presented by the white "redemptioners" who constituted an overwhelming majority of all newcomers for over a century before our Federal act of 1819 abolished the system—to say nothing of the black slaves we imported, and did not want to assimilate—has been clearly demonstrated. Those who deny the good citizenship, invaluable services, and assimilation of the "new immigrants" who have settled here, fly in the face of undeniable facts which were strongly emphasized in great State papers by Cleveland, Roosevelt, Taft and Wilson.

To establish quotas on national lines is, however, at variance with fundamental American principles, beginning with the Declaration of Independence statement; "all men are created free and equal," to say nothing about treaty faith. The whole idea of relative race values is objectionable, unreasonable and grossly offensive. It is not science, but pseudo-science. Ever since Edmund Burke's famous saying, it had been recognized that you cannot draw an indictment against a whole nation! All sorts of factors enter into play, and often an alien most desirable from one point of view, is least so from another. Nor will men agree as to the desirability of particular physically, mentally and morally sound persons, especially when they see them at Ellis Island, after long trips, partly spent in unsanitary steerages. While, for instance, the illiterate alien is less desirable than the literate for purposes of prospective citizenship, and he has been practically disqualified for such by recent laws, we particularly need the illiterate alien for farm labor and digging our subways, for instance. Literates, native or foreign-born, will scarcely ever engage here in such pursuits. In fact statistics show that English-born immigrants are least disposed to become naturalized here, because of their greater attachment to their non-persecuting native land.

But what are the nationalities whose coming is chiefly curtailed by this arbitrary resort to the 1890 Census as "inferior races"? There is Greece, to whom civilization owes so much in the fields of literature, science, art and democratic government. There is Italy which, beginning with Roman history, did so much for us along the lines of government, law, literature, art, music and navigation, including the gift of the discoverer of America, according to accepted views. There is Poland, which saved all Europe from the Turks at Vienna scarcely two centuries ago, and was once in the van in culture. There is Russia, which gave us in our own day a Tolstoi and a Turgenev and a Jewish Jean de Bloch, to plan for terminating warfare, the Hague Convention. And there are the Jews, whose contributions to the world, of religion, standards of righteous conduct, literature and commerce, can scarcely be overvalued. As the "Nordic" Matthew Arnold well said, in his "Literature and Dogma": "Greece was the lifter-up to the nations of the banner of art and science, as Israel was the lifter-up of the banner of righteousness."

Will any thinking man dare to put these races among the relatively inferior races of the world? Turn to the ablest recent observer of our country, men like Bryce and A. Maurice Low, and see what they

have to say about immigration, the value to us of the immigrants of these very races, our present agencies to promote their Americanization, and our wonderful assimilation of them! Let him also turn to the utterances of William D. Howells of 1909, directed particularly at the Italian immigrant, whom he learned to know so well: "I believe we have been the better, we have really been the more American for each successive assimilation in the past, and I believe we shall be the better, the more American for that which seems the next in order"—a view, so strongly confirmed in the works of our leading social workers who best know the "new immigrants" here, Jane Addams, Lillian D. Wald, Grace Abbott, Roberts and Steiner.

The wide-scaled investigations conducted by Professor Boas for the Immigration Commission showed that race distinctions over here are so temporary and ephemeral that even such stubborn differentiations as typical racial shapes of skulls, change here markedly, thanks to our American environment, climate and food, and the average skull of the South Italian and Russian Jewish immigrant in the second generation here, varies widely in inverse ratio from that of their foreign-born progenitors. Bryce in his "American Commonwealth" (particularly in the last edition), ably treated the pronounced modification wrought here in the inherited racial traits of European immigrants, and the unparalleled "immense assimilative potency of the environment" of America by enumerating the varied factors enrolled, and he concludes:

"His transformation is all the swifter and more thorough, because it is a willing transformation."

ASPECTS OF PENDING IMMIGRATION LEGISLATION

The "Gentleman's Agreement" With Japan, and the Treaty Authorized Inspection of Immigrants Abroad

The new Johnson immigration bill, as well as the bill reported by the committee of the House of Representatives last February, expressly abrogates the "gentleman's agreement" arranged with Japan and excludes practically all Asiatics not already residing here. By this "gentleman's agreement" Japan—in order to avoid humiliating legislation by us excluding her laborers—undertook, in 1907, herself, to regulate immigration of her subjects to our land, by preventing any of her laborers from emigrating to our country, except "former residents", parents, wives or children of residents and "settled agriculturists". Under our Immigration act of 1907 such laborers not hold-

ing Japanese passports to come to the United States were to be excluded under the President's proclamation, and in our treaty with Japan of 1911 this arrangement was expressly continued by Japan, and it has been effectively enforced.

Our courts have given full effect to this agreement (*Akira, Ono vs. U. S.* 267, F. R. 359 C.C.A.), which was one of President Roosevelt's finest pieces of statesmanship, effected with the aid of Elihu Root and Oscar S. Straus of his Cabinet, and it is well described in the autobiographies of Roosevelt and Straus. The new bill expressly sets it aside and further wounds the sensitive Japanese sensibilities in a report which accompanied last February's bill (House Reports, Sixty-seventh Congress, Fourth Session, No. 1621), expressly avowing intention to violate our treaty and arrangement with Japan in the matter. The serious injuries bound to result to our trade relations with the East are simply disregarded. Incidentally, it should be remembered (though not realized by this committee) that the "gentleman's agreement" was entered into to avert grave friction with Japan, which many of our people feared might actually turn into warfare, and also in connection with Secretary Hay's admirable policy of the "open door" for our commerce in the Far East.

At that very time, too, we were encountering a Chinese boycott, which for a considerable period stifled our entire American commerce with that country, because of deep resentment of our ruthless Chinese exclusion legislation and its enforcement, in violation of our treaties with China and decent treatment. These are some of the material factors—even apart from moral obligations—involved in the proposed legislative violation of treaties. Despite our express immigration treaties with Japan, China, etc., which were in terms limited to inclusion of laborers only, this new bill, as noted in my first article, provides that even merchants of Japan, China and other Asiatics not "white persons" capable of being naturalized here—may no longer enter, and even the right of their residents to return after temporary absence abroad is seriously curtailed. (See 144 U. S. 47).

PROPOSALS BRUSHED ASIDE

President Harding's and Secretary Davis's proposals for examination and inspection of immigrants abroad, to avert gross hardship and ill-feeling, are brushed aside in the statement of Congressman Box, on which the Congressional committee's opposition to treaty arrangement is based, with the remarkable statement ("Hearings" 1923 Serial

5C, page 488) that the officers to whom our foreign relations are entrusted are ignorant of what this committee esoterically knows, to wit, the impossibility of effecting such arrangements for inspection abroad, and the letter of the Italian Ambassador suggesting that the whole subject can be arranged by a treaty mutually satisfactory is gravely misinterpreted. It will be remembered that our Congress, of course, cannot legislate for foreign countries and provide for examinations by our officials on their territory without their consent. Such procedure necessarily requires a treaty, or other international arrangement sanctioning it.

It is, of course, the Congressional committee report—and not President and Cabinet—which displays unfamiliarity with the principal relevant facts. If the committee had had any knowledge of what is contained in the admirable objective and comprehensive report issued about a year ago by the “International Labor Office,” organized under the auspices of the League of Nations, entitled “Emigration and Immigration—Legislation and Treaties” (Geneva, 1922), it could not have made such blundering statements as its report contains. This work merely collates, ably and systematically, without criticism, the chief laws and treaty arrangements of all the world on the subject of immigration, including (pages 412-7) the twenty-nine recommendations of the “International Immigration Conference” of 1921, at which all the chief nations of the world, except ours, were represented. Reference is there made (pages 362-4) to the fact that upon President Roosevelt’s recommendation Congress in the Immigration act of 1907 (Section 39) gave the President authority to convene an international conference on immigration and arrange with foreign countries for examination before embarkation abroad (which Italy and some other countries soon after approved of), and that a number of European countries have recently entered into treaties with each other, providing for such examinations. It is also pointed out that the International Immigration Commission of 1921 referred to has expressly approved such treaty-arranged “inspection of emigrants before embarkation” (page 415) and many other valuable and comprehensive measures for mutual benefit and in the interests of humanity. President Harding, as head of our diplomatic affairs, well knew of the feasibility of his proposed plan.

This book felicitously states (page 399) that international arrangements on the subject are necessary because “emigrants constitute an essentially international population.”

OUR EARLIER TREATIES

The treaties of the United States show that our Government, from its origin, has treated immigration largely through treaties. Until the Napoleonic wars ended, nearly all European countries forbade the emigration of their subjects, chiefly in order to keep their potential soldiers and artificers at home, and emigration was gradually legalized by treaties with us; Russia legalized it less than a generation ago. Our treaties guaranteed the broadest rights of entry and residence to aliens, and the Wheaton treaties with Germany even expressly provided for a cessation of the spoliation of the emigrant coming to us through exorbitant taxation on leaving home.

Universal inborn prejudices against all foreigners made such treaties indispensable for their protection, and England had even safeguarded their rights by an express provision in Magna Charta, and by developing right of asylum and the "mixed jury" system. Even our first special immigration treaty, that of 1868, established limitations induced solely by a desire to prevent immigration of kidnapped Chinese coolies, similar to earlier treaties prohibiting the slave trade. Some of the latest, like that with Japan in 1911, under appropriate reservations adopted, expressly sanctioned the existing statutory and executive methods of regulating immigration, and that with Siam in 1920 even sanctions our future immigration laws. But, under our Constitution, treaty and statute have equal force as "the law of the land"—the latter in point of time, however, governing subject to the modification that, if possible, treaties will not be construed as superseded by later statutes, because of the element of good faith involved, unless the legislative intent to violate the treaty is unmistakable, though the violating State remains liable at the forum of international law.

Congress can, but of course should not, violate treaties. In a leading case the U. S. Supreme Court well said (176 U. S. 465):

"Aside from the duty imposed by the Constitution to respect treaty stipulations, the Court cannot be unmindful of the fact that the honor of the Government and the people of the United States is involved in every inquiry, whether rights secured by such stipulations shall be recognized and protected. And it would be wanting in proper respect for the intelligence and patriotism of a co-ordinate department of the Government were it to doubt for a moment that these considerations were present in the minds of its members when the legislation was enacted."

Most serious changes, in grave violation of treaties, have also been

made effecting China, Japan and various other Asiatic countries, whose subjects are not "eligible to citizenship" by naturalization, because not "white persons", as that term in our naturalization laws was recently construed by the United States Supreme Court. That court has reversed heretofore prevailing lower court decisions by holding not merely Chinese and Japanese but also Hindus to be thereby excluded from naturalization, though Africans are expressly eligible. Even the racial scope of this new provision is still uncertain. The bill, by applying this "eligible to citizenship" by naturalization provision to our immigration laws, absolutely excludes all their inhabitants from admission to this country, despite our express treaties with China, Japan, and as to Asia, with England, Turkey, France, etc., unless they be professional persons, or students, or the wives or unmarried minor children of such exempts, or unless they are residents "returning from a temporary visit of not more than one year." Even merchants of these races (and not merely laborers) are thereby excluded, though every treaty and prior statute affirmatively authorized their admission; and even resident Japanese merchants who settled here on the faith of our treaties and have all their interests here will be permanently barred from re-entry, if by reason of shipwreck or illness, for instance, they do not return "within a year" (a new limitation, by the way, in this bill) after a temporary visit abroad, and their wives and children may not join them here! Little relief—especially in the case of unpopular Asiatics—will be afforded by Section 12 (c), authorizing the Secretary in rare particular cases, to admit excess quota immigrants, not merely because the provision seems to be inapplicable even to merchants of races not entitled to be naturalized but because the authority is very greatly limited, and denied altogether in every case, if the year's quota is exhausted. The extent to which these new clauses will create friction with Japan and other countries can be imagined!

The bill also changes the law by authorizing deportation without any limit of time where the alien is claimed to have entered unlawfully in any respect!

AMELIORATING THE QUOTA LAWS*

Statement of Max J. Kohler, Chairman of the Committee on Immigration and Naturalization of the American Jewish Committee

Mr. Kohler. My name is Max J. Kohler; address 25 West Forty-third Street, New York.

I am chairman of the committee on immigration and naturalization of the American Jewish Committee, of which Mr. Louis Marshall, who lately passed away, was president, and of which Dr. Cyrus Adler is now president.

Doctor Adler deeply regrets his inability to be here to-day, and I am acting on behalf of the committee; and I might say a word or two further about the personnel of our committee, so that the gentlemen will see who is on our executive committee.

The president is Doctor Adler, who is president of the Jewish Theological Seminary. One vice president is Julius Rosenwald, of Chicago, president of Sears, Roebuck & Co., the well-known philanthropist; another vice president is Judge Irving Lehman, of our New York Court of Appeals. Mr. Isaac M. Ullman, of New Haven, is treasurer, and Judge Horace Stern of Philadelphia is chairman of the executive committee. Judge Cardozo, the chief judge of New York, is another member of our executive committee; ex-Ambassador Elkus is another member, and Judge Eli Frank, of Baltimore, is another member. I am a member of the executive committee.

Herbert H. Lehman, Lieutenant Governor of New York, is also a member of our executive committee.

James Marshall, the son of Mr. Louis Marshall, is another member.

Mr. Ratschesky, of Boston, who has just been appointed Minister to Czechoslovakia, is another member.

Prof. Milton J. Rosenau, professor of Preventive Medicine at Harvard, is another member.

Mr. Felix Warburg of Kuhn, Loeb & Co., the philanthropist, is another member.

I need not take up more time in regard to the personnel. I might say, so far as I myself am concerned, that I have been deeply and actively in-

* Hearings before House Committee on Immigration, 71. 2. 7., January 27 and February 4, 1930.

terested in immigration questions since 1894, having been assistant United States district attorney in New York between 1894 and 1898; and since then I have had extensive experience in the courts, in the Supreme Court of the United States and other Federal courts, in immigration and naturalization matters. During late years, due to my active interest in immigrant aid work, my work in the courts has been done purely as a labor of love.

To take up the bills which are before you, gentlemen, I want to heartily approve H. R. 5645 in regard to holders of visas granted before July 1, 1924. I think the honor of our country is involved in recognizing those visas. It is an unprecedented thing that the holders of these visas, which were issued on the faith of the Government to persons who disposed of their property and made all of their arrangements to leave home, on the faith thereof; in short, burnt all their bridges behind them, should now find that, through some construction of a remedial measure like the act of 1924—because that is all it really was, in substance—should now find that the Government is not honoring the passports visaed by its representatives, perfectly valid when issued.

The Chairman. Let me ask you, do you remember about how many persons held visas or real passports or near passports at the time the act of 1924 went in?

Mr. Kohler. I can not give you the figures. I am quite confident that the great bulk of them have already come over here under the later act of 1924. The number of those entitled to such preferential status is now very much smaller than it was originally.

The Chairman. We can save time by getting at that right now. My impression is that they were originally about 35,000. They are now about 1,800?

Mr. Kohler. About 1,800?

Mr. Dickstein. 2,008.

The Chairman. They have come down a little bit.

Mr. Dickstein. They are coming down now, because we are admitting wives and children this year.

The Chairman. That is exactly the point I want to bring out. That is to say, the State Department, by crowding the holders of those visas as far to the front as possible, has got it cleaned out down to 2,000; but certain preferences were made in the quota, and the State Department lost its opportunity as to visa holders.

Mr. Kohler. The refunding of the money is a mere bagatelle.

The Chairman. I am not talking about the refunding of money.

Mr. Kohler. I am telling you frankly that I have not the figures. You have those much better than I have.

The Chairman. Yes.

Mr. Kohler. I do want to say, in regard to our past experience in matters of that kind, the principle of law and the principle of common sense and equity is, of course, that no statute, unless it is absolutely essential, should be construed to be retroactive, unless it is absolutely indispensable; and no certificate or passport ought to be invalidated when it was valid when issued. The principle has, of course, been repeatedly laid down. It never was better laid down than in an opinion by Chief Justice Marshall; and when we lawyers can invoke his authority, we are, of course, eager to do so.

Many years ago, in the case of *Reynolds v. McArthur*, in 2 Peters 417 at 434, Chief Justice Marshall speaking for the Supreme Court said:

It is a principle which has always been held sacred in the United States that laws by which human action is to be regulated, look forward, not backward; and are never to be construed retrospectively unless the language of the act shall render such construction indispensable. No words are found in the act of 1818 which render this odious construction indispensable. It does not annul patents already issued * * *. Patents which have been granted are not affected directly by the words of this law, and must depend on the preexisting act of Congress.

The Chairman. At this point I will have inserted in the record a letter dated January 25, from the State Department, addressed to Mr. Dickstein.

(The letter referred to is here inserted in the record, as follows:)

Department of State,
Washington, January 25, 1930.

Hon. Samuel Dickstein,
House of Representatives.

My Dear Mr. Dickstein: Replying to your letter of January 17, 1930, it may be stated that it has been ascertained from reports received from American consular officers that approximately 15,000 visas were made invalid by the immigration act of 1924.

On the basis of reports submitted by certain consular officers in reply to telegraphic instructions sent by the department on December 6, 1928, it is estimated that there are now approximately 2,008 aliens in possession of passport visas issued during the fiscal year

ended June 30, 1924, who have been unable to complete their journey to the United States on account of quota limitations. This estimate comprises 1,888 aliens chargeable to the Russian quota and 120 aliens chargeable to the Turkish quota.

The department understands that there is also a limited number of aliens in possession of passport visas issued during the fiscal year ended July 30, 1924, who have not chosen to reapply for immigration visas, although exact data in regard to such cases is not available.

Although I shall be unable to attend the hearing on January 27 on the immigration bills under your name, I desire to confirm Mr. Simmons's verbal assurance to you that he will be pleased to attend and testify if called upon.

Sincerely yours,

WILBUR J. CARR.

The Chairman. Proceed, Mr. Kohler.

Mr. Kohler. The same question came up several times, and practically the same question, under our Chinese exclusion laws. The exclusion law was passed in 1882. People who were here before that time had gone to China, in some cases on a visit, and they wanted to come back. In the meantime, the Chinese exclusion acts of 1882 and of 1884 were passed, which required all persons to have certificates in order to enter, and the Supreme Court said that those people who had left on the faith of the old law were, in spite of the language of the statute, entitled to come in without the certificates. That was the leading case, *Chew Heong v. The United States*, in 112 U. S. 536, and that was followed soon after in a case in 124 U. S. 621. Similarly, Chinese registration certificates were required under the act of 1882 and next year all Chinese laborers were required to secure a different certificate, containing their photographs, but the court held in 110 Federal Reporter 154 that holders of the earlier certificate required no new one.

I will go further than that, and say that a very serious question of law arose as to whether the executive department's position that those old certificates were superseded was correct. It never was tested. There are no decisions in the courts on the question, but the visas ran out within a year.

Now, a number of those people did leave the foreign countries where they were, particularly Jews who left Poland and Russia, leaving horrible conditions at home, particularly conditions of unprecedented economic distress. A number of them are no longer in those countries

of their original habitation, but are elsewhere, but they have the visa of this Government, and they ought to be allowed to enter under the visa as a matter of governmental honor.

The Chairman. Where are the principal numbers of them now?

Mr. Kohler. I do not know. I believe there are some in Cuba, and there are some scattered in France, and all over the world, but few left in Russia. People were very glad of the opportunity of getting out of Russia. For instance, at present it is almost impossible to do it.

Possibly you gentlemen may not know that Russia's present attitude is, and her attitude for some time has been, to require a passport fee of \$150 for each passport, and a person may not carry out more than \$150 of property, altogether; so that it is practically impossible to get out of Russia now; and you know that those figures, for the average immigrant, are absolutely prohibitive. Increasing quotas for new passports won't relieve these poor people.

Those people are better off than they were in that horrible Russia, even now; but they had parted with their property on the faith of this Government.

The Chairman. Now, in the case of the Russians, the visa was on the passport of a neighboring country.

Mr. Kohler. Yes.

The Chairman. The committee has that matter pretty well in hand, now, and we are glad to have had that testimony which you have given, which is right to the point.

Do you want to speak to another bill?

Mr. Kohler. I might call attention to the fact, also, that the people who left their countries, and who were advised to leave their homes, under the act of 1921, did so under the very general impression that that act was much more humane than ultimately, after it had been amended in various ways, it was construed by the courts as being.

The chairman of this committee himself is on record as saying, in debate in Congress, when the act of 1921 was under consideration, that the visa was the thing that would count, and people were not to be deported because they came over here and then found that the quotas of admission were exhausted then. I would like to refer particularly to what the chairman of this committee said, which is to be found under date of April 20, 1921, in volume 61 of the Congressional Record, page 500.

The Chairman. All right.

(The quotation referred to from the Congressional Record is as follows:)

Mr. Sinnott. In case more than 3 per cent applied to come to our country from some foreign country, in case, say 5 per cent apply, who makes the selection of the 3 per cent?

Mr. Johnson of Washington. Incoming aliens come with passports. They must have passports from their governments and visas of those passports by our consular agents. Should there be a surplus from any country undertaking to seek passport visas, the consular agent at that particular place would have, on the information here of the number which can be received, to refuse further visas.

Mr. Sinnott. Would the consular agent calculate on the 3 per cent from the foreign country?

Mr. Johnson of Washington. No. His power to visa would not go beyond the number that might be permitted to proceed to the States.

Mr. Kohler. Chairman Colt, of the Senate committee, said the same thing there, and I think that equity and that sense of high responsibility in the two committees of Congress, and especially the chairmen of these committees, should induce them to exercise or at least to try to exercise humanity in connection with relieving some of the distress that exists in connection with the act of 1921. I think the chairman of the committee, in connection with other bills, has recognized this responsibility and this equity.

That is all I want to say on that bill. I would like to take up others, though.

Bill No. 5646 creates non-quota status for the husbands of United States citizens and fathers and mothers of United States citizens and had just been referred to by the former speaker. Others, no doubt, will devote themselves particularly to that measure. I will not enlarge on it, particularly not the matter of the husbands, which has just been referred to.

The matter of the fathers and the mothers, as well as husbands of United States citizens, is changed in a very important respect by Congressman Dickstein's bill, which has my hearty approval, inasmuch as he provides that those people should be taken out of the quota, instead of having a preferential status under the quota, and it is most important; because, frankly, my sympathies, as I will presently show more clearly, run particularly to the cases of the wives and minor children of residents of the United States not yet citizens, who, in the case of countries with small quotas, are unable to join their husbands and fathers here for years to come.

The courts have dealt with that question repeatedly, also.

At one time, under the Chinese exclusion laws, I had charge of Chinese exclusion cases for the Government, years ago, and I followed that up.

In the case of the *United States v. Mrs. Gue Lim* (176 U. S. 459), the court held that though there was no specific provision of the statute at all, the wives and children of resident Chinese merchants legally here, as well as other privileged classes, might enter, and they approved particularly the language of the courts along the Pacific Coast in the case of *Chung Toy Ho* (42 Federal Reporter, 398), where the court had said:

A Chinese merchant who is entitled to come and dwell in the United States is thereby entitled to bring with him, and have with him, his wife and children. The company of the one and the care and custody of the other are his by natural right, and he ought not to be deprived of either, unless the intention of Congress to do so is clear and unmistakable.

The Chairman. Is that a late decision?

Mr. Kohler. No, it is an early one; but it is law to-day.

The Chairman. There have been some late decisions.

Mr. Kohler. Congress has a right to overrule principles of humanity and equity, if it chooses; I do not dispute the legal proposition, but it surely ought not do so. The later cases do not alter that. In fact, *Chung Sum Shee v. Nagle* (268 U. S. 336) so rules under the quota act of 1924. That is the law, so far as the Chinese exclusion laws are concerned. We are discriminating against the non-Chinese, in this, compared with the Chinese exclusion law.

I have been asked to mention a late case, and I would like to make a citation from the unanimous decision of the Supreme Court of the United States in the case of *Meyer v. Nebraska*, in 262 U. S., at page 399, which involved the use of foreign languages in the schools—instruction in them—in which the United States Supreme Court said:

One of the privileges long recognized in the common law as essential to the pursuit of happiness by every man is the right to establish a home and bring up children.

And I say it is inhuman, and it causes all sorts of misery, both here and abroad, to have this separation of families going on, and anything within reasonable limits that Congress can do to cure that inhumanity ought to be done.

The Chairman. What do you refer to? What form of inhumanity?

Mr. Kohler. The separation of families by keeping the wives and minor children of men who are here in the United States, abroad for

years and years to come, in connection with the countries which have small quotas, and from which the so-called new immigrants involved have come here in large numbers for years before the act of 1924 was passed.

I am very glad to be able to invoke the authority of the Commissioner General of Immigration in connection with this bill, because in his last annual report, on page 30, he recommends the non-quota status for parents over 60 of United States citizens, and unqualifiedly, on page 30, recommends the non-quota status for the husbands of American citizens.

Taking up another bill H. R. 5647, which is the bill giving leave to deported aliens to reapply for admission, with the leave of the Secretary; as to that bill I have told Congressman Dickstein that I think there may be some technical error in draftsmanship. The penal provision, referring to required consent of the Secretary of Labor to reapply, is absent from the first clause of his bill, the debarring provision; with that qualification, namely, that readmission should be granted where the people first, before they apply for admission at our ports, have secured the leave of the Secretary to reenter. I heartily approve of that bill, thus qualified. We know that people may be deported without any fault of their own at all, simply because they may have entered at a wrong place. For instance, if a train breaks down, or a boat is in distress, and the passengers are landed at a wrong place, which is not one of the established ports or places of entry, they are here illegally, and may be deported, and it is absurd that those people should be forever and aye debarred, unless at some time before 1929, under the present law, they shall have received the permission of the Secretary of Labor. Similar as to other technical violations of law, which may have given grounds for deportation.

Mr. Dickstein. I have your amendment on that and will give it to the committee.

Mr. Kohler. I do not want to elaborate in regard to technical things, but I do feel bound to say that I approve of that, so qualified.

Mr. Dickstein. I have the reasons here and your amendment.

Mr. Kohler. The bill, H. R. 5647, should be amended by striking out in line 10, after the word "expiration," the words "of one year," and inserting, "without the consent of the Secretary of Labor obtained before he arrives at any port or border of the United States."

Mr. Dickstein. That is your amendment.

Mr. Kohler. That is my proposed amendment.

Mr. Dickstein. To H. R. 5647?

Mr. Kohler. And it is exactly in line with the Commissioner General

of Immigration recommendation, found on page 30 of his last annual report.

The Chairman. That will be inserted.

(H. R. 5647, Seventy-first Congress, second session)

A BILL To amend the act of March 4, 1924, making it a felony for certain aliens to enter the United States of America

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subdivision (a) of the act approved March 4, 1929, entitled "An act making it a felony with penalty for certain aliens to enter the United States of America under certain conditions in violation of law," be amended to read as follows:

"(a) If any alien has been arrested and deported in pursuance of law, he shall not be eligible to again seek admission to the United States without the consent of the Secretary of Labor, obtained before he arrives at any port or border of the United States."

Sec. 2. Subdivisions (d) and (e) of section 1 of said act are hereby repealed.

Sec. 3. The act shall take effect immediately.

Mr. Kohler. I understand that the family quota bill is not under consideration to-day, and I will not say anything about it, then.

(H. R. 6852, Seventy-first Congress, second session)

A BILL To amend an act to supplement the naturalization laws, and for other purposes, approved March 2, 1929

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subdivision (a) of section (1) of the act entitled "An act to supplement the naturalization laws and for other purposes, approved March 2, 1929, be amended so as to read as follows:

"That (a) the registry of aliens at ports of entry required by section 1 of the act of June 29, 1906 (Thirty-fourth Statutes at Large, part 1, page 596), as amended, may be made as to any alien not ineligible to citizenship in whose case there is no record of admission for permanent residence, if such alien shall make a satisfactory showing to the Commissioner General of Immigration, in accordance with regulations prescribed by the Commissioner General of Immigration, with the approval of the Secretary of Labor, that he—

"(1) Entered the United States prior to July 1, 1924;

"(2) Has resided in the United States continuously since such entry;

“(3) Is a person of good moral character; and

“(4) Is not subject to deportation.”

Sec. 2. This act is to take effect immediately.

With regard to H. R. 6852, the registry of aliens amendment, changing the date to 1924, instead of under the present, 1921, I want to call attention to the fact that the Commissioner General of Immigration recommends the change, on pages 30 and 31 of his report.

The bill in that form passed one of the Houses, but was defeated in the hurry of conference committee proceedings, at the very end of the session; and there, also, an important fact probably has been overlooked, creating a strong equity outside of the general argument that it is unwise and unwholesome to keep a lot of people here who can not be deported, and who under the law can not become citizens of the United States. Congressman Johnson's memory will bear me out in regard to this. Under the closing proceedings under the act of 1921, in order to beat one another, some of the steamship lines sent passengers over here and made entries at unauthorized places, and in order to get here all the quicker and beat the other people coming in regular course, who otherwise would then have had their places as admitted within the quota. Those people are practically subject to deportation, because they were admitted since the act of 1921 at places which were not regular places of entry.

The Chairman. Let us clear the atmosphere a little on that. A great many who came after June 3, 1921, and before July 1, 1924, knew that they were coming in in violation of the temporary quota law, and very often, where they gave themselves up, they were deported; and that has led to a desire on the part of the House of Representatives, at least, to not put them in the class here before the beginning of the counting system, before any quota system, at least until we catch up with those who were here prior to June 3, 1921. It was supposed to be a great number. We now find that the process is slow, and the numbers are not taking advantage of that so-called *nunc pro tunc* in anything like the great numbers that we thought would happen.

Until the machinery can be provided to take care of those who were here a long time ago, might it not be better to let those who came in after June 3, 1921, wait a while? They are here; the 5-year limitation has run; they cannot be deported, except for certain very serious crimes. Even if you passed an act now letting them in up to July, 1924, the machinery is not available, and will not be available for quite a time, to take care of them.

Mr. Kohler. I think that creates a bad atmosphere in the country, to have people here who can not become citizens, and who can not be deported; and in addition to that, to make them realize that they have a Damocles sword hanging over their heads all the time will affect their conduct in all other matters. I think there have been many who came over here in perfect good faith under the act of 1921. As a lawyer, and one who was counsel in the Gottlieb case (265 U. S. 310), in which the Supreme Court reversed the Court of Appeals, which had decided——

The Chairman. If you start on the Gottlieb case, we will be here all day.

Mr. Kohler. I do not want to go into it any further than to say that even lawyers and judges were in doubt as to who could and couldn't enter under the act of 1921, and the aliens from abroad could not know. And so far as that raises the question as to the people who came in under the act of 1921, even in excess of quota numbers, Congress has aided them several times under special legislation.

The Chairman. You see, that is what we get. We, as an act of grace, took care of all those cases. At one time we had the passport holders in that, but we thought it was putting more in one bill than we could pass. Anything that is done as an act of grace becomes a precedent.

Mr. Kohler. But they cannot become citizens, and they are here and cannot be deported, and they ought to be made to feel that they are a part of our people, and ought to be——

The Chairman. They ought to recognize the fact that they beat their way into the United States.

Mr. Kohler. The question whether they beat their way in, is one that ought to be considered on the basis of the Gottlieb case. In many cases I want to say that they did not consciously beat their way, but that they acted under the decisions of the courts, which finally the Supreme Court reversed.

I have taken up much more time than I intended to. I want to take up now the last bill that I want to say something about, which is H. R. 7703, a bill which provides that it shall not be necessary to deport people who entered under the temporary status of visitors, or the like, if they are, under existing law, admissible for permanent residence.

I have suggested to Congressman Dickstein that I think inadvertently that bill is too broad, there, and I have suggested limiting it so as to make it applicable to these temporary visitors covered by section 3, only as far as subdivision 2 and 6 are concerned, because I do not think that people who came over in transit, for instance, or as sailors, or in transit

to another country should get the benefit of this bill if they are in a different status now. But the situation is different in regard to persons who came over here under treaties authorizing them to enter for the purpose of trade, and people who came over here as visitors for pleasure or business or the like.

Mr. Dickstein. You are talking now about H. R. 7703?

Mr. Kohler. About 7703.

The Chairman. We will have inserted in the record at this point the bill 7703.

(The bill referred to is here printed in the record, as follows:)

(H. R. 7703, Seventy-first Congress, second session)

A BILL To amend the immigration act of 1924

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to limit the immigration of aliens, and for other purposes," approved May 26, 1924, be amended by adding thereto a new section to be known as section to read as follows:

"Sec. . Whenever an alien theretofore admitted under subdivisions 2 and 6 of section 3 of this act becomes eligible for admission under any other section of this act, it shall not be necessary for such an alien to depart from the United States in order to reenter this country, but the Secretary of Labor is hereby authorized to prescribe by regulation such a method as will permit such an alien to enter this country without application for a visa to be made to any consular officer."

Sec. 2. This act shall take effect immediately.

Mr. Dickstein. There will be inserted at this point H. R. 5648, with amendments proposed by Mr. Kohler.

(H. R. 5648, Seventy-first Congress, second session)

A BILL To provide for a family quota)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the immigration act of 1924 be amended by adding thereto a new section, to be known as section 4 (a) and to read as follows:

"Sec. 4. (a) Whenever a quota place (number) was or shall hereafter be issued to an applicant therefor as provided by this act and a number assigned to such an applicant, such number shall include the applicant's wife or husband, if any, and children under the age of twenty-one. Such quota number, once issued, shall be sufficient to cover the wife or husband, respectively, and any chil-

dren, and it shall not be necessary thereafter for any such party to apply for a quota number: *Provided*, That the person to whom such quota number is issued shall depart for the United States promptly and the persons entitled to join them in such quota actually enter this country within one year thereafter."

Sec. 2 This act is to take effect immediately.

The Chairman. Proceed, Mr. Kohler.

Mr. Kohler. As so limited, the scope of such bill will be very narrow indeed. There are comparatively few people who come over here as visitors for temporary purposes of visiting relatives, or trade, or for commercial purposes under treaty, and the number is particularly narrow under the recent ruling in this Canadian entry case, in the Supreme Court of the United States, which construes very narrowly the term "business," so as not to include laborers, entitled *Karmath v. U. S.* (279 U. S. 231).

Mr. Kohler. It is a well-known case. It involved the phrase "trade and business," under the treaty covering Canada, under which the people who make a practice of coming over as laborers here have been held not to be covered by that, if they were not born in Canada, and within the treaty quoted.

The Chairman. I remember, now.

Mr. Kohler. In addition, that bill, as drafted, does not permit anyone to stay here unless he is enjoying, under the new law, if he came over, anew, nonquota status. Really, the present law is absurd unless it was intended—which, of course, is an absurd supposition—to benefit the railroads and steamship companies, and to compel people who have a right to come over unconditionally—for instance, if they married an American citizen or anything of that kind—to go over and come right back again.

When the Gottlieb case was decided—I am not going into the merits of the case—Congress had just passed the act of 1924, and the wife and children of a minister of religion were involved; and Mr. Marshall, who was chief counsel in the case, in view of the act of 1924, which gave a non-quota status to such persons, moved the Supreme Court to amend its mandate to permit the Secretary to admit those people, as it would be absurd for them to go back and then come over anew at heavy expense and bother. They were enjoying nonquota status under the new law. The court granted the motion, and the department admitted them.

The Chairman. Congress passed an act to relieve the situation.

Mr. Kohler. The act was passed later on. They were admitted immediately.

There is a decision under the Chinese exclusion laws, in California, in the case of *Tsoi Sim v. U. S.* (116 Federal Reporter, p. 920), by the California circuit United States Circuit Court of Appeals, which expressly turns on that point. The court said in effect that it is ridiculous and unreasonable to suppose that people who may have been unauthorized to remain here, under the laws at the time of their entry, but who are now permitted to stay, should be forced to go out of the country and then return. In that case the woman, after an unauthorized entry, was married to a bona fide Chinese merchant, and it was held to be unreasonable that she should have to leave the country and then reenter, and they held that those people were admissible.

The Chairman. In other words, that would not increase the quota at all, because persons of that character would be entitled to remain if they had an extension.

Mr. Kohler. That is all the bill does and, with the limitation I have suggested, the potential number that could be benefited, which are, I presume, the classes that Congressman Dickstein had particularly in mind, would be very small indeed, and, of course, the immigration authorities go very carefully—and they are going, probably, more carefully now, after this Canadian entry case—into the bona fides of people who claim they are coming over here for visits, temporarily, or want to conduct trade here.

I have taken up much more time than I intended to, and I thank the committee for its attention.

The Chairman. Your statement has been very important, and is greatly appreciated by the committee.

ADMINISTRATION OF OUR IMMIGRATION LAWS*

I.

In the course of an interesting address dealing with our immigration policy, delivered before the Republican Club of the City of New York on March 11, 1911, Hon. Charles Nagel, Secretary of Commerce and Labor, said—to quote the report in the *New York Times* of the next day, which is confirmed by personal recollection: “There is no more autocratic power anywhere than Congress has given the Secretary of Commerce and Labor. I can send back anybody. It is an awful power, but I try to use it to the best of my ability, and no court can reverse me, though even the courts are criticizing me now.” In describing the vesting of this power in himself, Secretary Nagel of course referred to himself impersonally, as head of his department, for only a very small, and numerically almost negligible, percentage of cases comes before him personally, as the great majority of exclusions are accomplished without appeal to Washington, through the exercise of authority by immigration inspectors, Boards of Special Inquiry and Commissioners of Immigration, and the number of deportations of immigrants after admission, which require a warrant from the Secretary, is relatively small numerically. Unfortunately, Secretary Nagel’s humane sentiments, influencing the exercise of his own authority, and recognition of his tremendous powers, are not shared in practice by all his subordinates, particularly not at the port of New York, where about 77 per cent of all immigrants coming to this country, land. Washington is, figuratively speaking, a long way from New York for immigration inspectors, who, as will be seen later, have received quite different instructions from their immediate superior, Commissioner of Immigration, William Williams, whose present term of office began on May 28, 1909.

Before entering upon a consideration of the policy of the law, in vesting administrative officials with such enormous power over individual liberty and fortune, and even making their determinations non-reviewable in the courts, and before discussing the manner in which this power has been exercised, a consideration of a few statistics will show how correct Secretary Nagel was, in describing this power of

* *The Editorial Review*, Aug., pp. 722-735 and Sept., pp. 830-840, 1911.

exclusion and deportation as unsurpassed in autocratic character. As regards arrivals of immigrant aliens, we reached our high-water mark during the fiscal year ending June 30, 1907, just before the panic, when 1,285,349 arrived here; during that year 13,064 immigrants were debarred here from landing, or about 1 per cent, and 995 more were deported after admission. During the next fiscal year, ending June 30, 1908, by reason of the effects of the panic, which were immediately observed abroad, the number of immigrant aliens arriving fell to 782,870; 395,073 emigrant aliens left this country, and the number debarred was 10,902, or about $1\frac{4}{10}$ per cent. During the fiscal year ending June 30, 1909, which included only about one month of Mr. Williams' commencing term, the number of immigrant aliens who arrived here was 751,786, while the percentage of exclusions was $1\frac{38}{100}$ per cent, exclusive of deportations after admission. During the past fiscal year, ending June 30, 1910, 1,041,570 immigrant aliens were admitted, and an enormous army of 24,270 unfortunates was debarred here, or $2\frac{33}{100}$ per cent, while 2,695 were deported after admission. The percentage of exclusions effected here (exclusive of deportation after admission) had thus increased from one out of every hundred in 1907 to about $2\frac{1}{3}$ persons out of every hundred in 1910. But the upward movement was continuing in most marked fashion: during the six months ending December 31, 1910, the percentage of exclusions was $2\frac{65}{100}$ per cent, while in January, 1911, Mr. Williams' high-water mark was reached, $6\frac{1}{10}$ persons excluded out of every hundred arriving, although, after that, the percentage tended downwards, as protests began to be effective, and Secretary Nagel gave public expression to his more reasonable views, and Congressional investigations began to be threatened, becoming $3\frac{26}{100}$ per cent in February and $2\frac{2}{10}$ per cent in March, 1911, and $2\frac{34}{100}$ per cent in April, 1911.

While the percentage of exclusions to admission at the port of New York during the period running from July 1, 1910, to March, 1911, was $2\frac{16}{100}$ per cent, it was merely $1\frac{49}{100}$ per cent at Boston, $1\frac{31}{100}$ per cent at Philadelphia and $\frac{46}{100}$ of one per cent at Baltimore, clearly showing how much more harshly the law is administered in New York than elsewhere. Of 15,632 immigrant aliens ordered back between July, 1910, and February, 1911, on seeking to enter the United States here, 8,280 were excluded as "likely to become a public charge," 1,983 additional on surgeon's certificate of defect, which may affect alien's ability to earn a living (other than idiots, imbeciles, feeble-minded, insane, sufferers from tuberculosis or loath-

some or dangerous contagious diseases) ; 33 paupers, 387, because under 16 and unaccompanied by parent, 84 as assisted aliens, and 2,181 as sufferers from loathsome or dangerous contagious diseases, chiefly trachoma cases. In other words, putting the first two classes together, about two-thirds of all exclusions were based upon alleged "likelihood to become a public charge," and less than 14 per cent because suffering from alleged "loathsome or dangerous contagious diseases." Since Congress, on March 3, 1903, imposed a penalty of \$100, collectible by mere administrative process, upon steamship companies, for each alien afflicted with a loathsome or dangerous contagious disease brought by them to the United States, in cases where the existence of such disease might have been detected by means of a competent medical examination abroad, the percentage of exclusions because of the presence of loathsome or dangerous contagious disease has dropped very much, and the largest number of cases of such exclusions, 1,442 last year, or about one-quarter of all, are based upon the alleged presence of trachoma, more commonly and less scientifically known as "sore-eyes," which is really not serious and is now, under improved medical treatment, readily curable; in fact, it is only since this disease was rather arbitrarily classified in 1897 as a "loathsome or dangerous disease" that large numbers of exclusions on medical grounds took place.

The reference to medical examinations of immigrants abroad, suggests a slight elaboration of that question. The national "Immigration Commission" devoted considerable attention to the character and effectiveness of the foreign medical examinations of prospective immigrants and reports that "as a result of the foreign inspection, in an ordinary year, about four times as many intending immigrants are refused transportation for medical reasons alone, as are debarred here for all causes, and about ten times as many as are debarred here for medical reasons alone." These medical examinations abroad have become more rigid and effective, since the constitutionality of the aforementioned Act of 1903 was sustained, notwithstanding grave doubts, by the United States Supreme Court, on June 1, 1909, in the case of *Ocean Navigation Co. vs. Stranahan*, 214 U. S., 320, and the immigrants who have come over here during the past two years have been appreciably more desirable, and not less so, physically and in all other respects, than the immigrants of the few years preceding the last-mentioned date. Other reasons than the application of established standards and tests must therefore be sought, to account for the enormous increase of exclusions of immigrants, raising the average from one immigrant debarred out of every hundred of former years to Commissioner Williams' record

of $2 \frac{1}{3}$ out of every hundred for the year ending June 30, 1910; $2 \frac{65}{100}$ for the next six months, and $6 \frac{1}{10}$ for January, 1911. The simple fact is, as will be further shown hereafter, Commissioner Williams has usurped legislative and administrative authority, and has compelled his subordinates on Ellis Island, by reason of such material *changes in the law*, made under the guise of administering existing laws, to exclude thousands of unfortunates, many of whose lives and careers are in consequence wholly ruined, and who are even unable to ascertain before embarkation what these new, unwritten, ex-post facto laws are, which he has evolved out of his inner consciousness!

In order to understand present conditions at Ellis Island, we must follow Mr. Williams' career there, and the writer hereof has had occasion to keep closely in touch with existing conditions, because of his active affiliation with various immigrant aid and other organizations, and has also had active professional experience in the enforcement of our immigration laws ever since 1894. Mr. Williams was scarcely in office a week when he issued a circular on June 4, 1909, directed to all immigrant inspectors at Ellis Island, which provided: "It is necessary that the *standard of inspection at Ellis Island be raised*. Notice hereof is given publicity in order that intending immigrants may be advised before embarkation *that our immigration law will be strictly enforced*; so that those who are unable to measure up to the requirements of the law may not waste time or money in coming here, only to encounter the hardships of deportation"; this circular was given wide publicity in the daily press, and was reprinted as part of Commissioner Williams' report in the Annual Report of the Commissioner-General of Immigration for 1909 (p. 132). It will be noticed that this circular *assumes* that the prevailing enforcement of the law was such that the standards must be raised, an assumption based upon less than a week's official scrutiny, while on the other hand, its very indefiniteness as to the grounds of his grievances, was demoralizing. It further gave notice to his subordinates that the law would be "strictly enforced," whereas the principle of law is fundamental that our immigration laws, like all laws in restraint of individual liberty, are required to be fairly and liberally construed in favor of individual liberty.* Moreover, as

* *Moffatt vs. U. S.*, 128, F. R. 375, 378; *Tsoi Sim vs. U. S.*, 116 F. R., 920; *Japanese Immigrant Case*, 189 U. S., 100; *Lau Ow Bew vs. U. S.*, 144 U. S., 47, 59; *Rodgers vs. U. S.*, 152 F. R., 346, 350; *In re Tang Ton*, 161 F. R., 618, aff. as to *Con Pon* in 168 F. R., 479; *Botes vs. Davis*, 173 F. R., 996; *Lieber's Hermeneutics* (3rd Ed.), pp. 128-9, 137; *Harten vs. Goldstein*, 20 App. Div., 203, 206; *Am. & Eng. Ency. of Law* (2nd Ed.), Vol. 26, pp. 661-2, 659, 646-8; *Coffin vs. U. S.*, 156 U. S., 432.

was pointed out in an able editorial criticism of Mr. Williams' course in the *New York Evening Post* of July 16, 1909: "As to the fear of letting in aliens to become public charges upon public charity, it seems to us that the provision of the law which orders such immigrants back within three years after their arrival, should encourage clemency at Ellis Island, rather than harshness. If the immigrant who falls into pauperism can be gotten rid of within three years, why should our immigration officers speculate excessively upon the chances of an immigrant becoming a pauper? Here again he should be given the benefit of the doubt—given a chance to show that what this country offers its newcomers is not poverty, but a living."

To return, however, to Mr. Williams' first circular, it is obvious that its natural consequence was to convince Mr. Williams' subordinates—\$1,400 to \$1,800 a year inspectors, with families dependent upon them—that they were required to administer the law harshly, and that they had been too lenient theretofore, but just in what respect they were to mend their ways was not disclosed, so self-interest, and possibly also duty, required their turning over a new leaf all along the line. As will be further noticed presently, other specific directions, written and verbal, embodying misconstructions of the law in particular respects on Mr. Williams' part followed, but here the point should be observed that a general increase of rigor of enforcement was ordained, and the Commissioner lost no time in impressing upon his subordinates the consequences of disregard of his theories of law, whether offered as "directions," "suggestions," "advice" or "general disquisitions on public policy." On July 15, 1909, soon after Mr. Williams had issued his famous \$25 circular, presently to be considered—which made important affirmative changes in the law—immigration inspectors read items in the daily newspapers which filled them with consternation and terror. They read in interviews officially given out in Washington that Mr. Williams had just had a conference with the head of his department, at which it was decided that "the immigration laws at Ellis Island will be enforced strictly," and that "a recent investigation showed that there were 472 employees there, and that 139 did not measure up to the new standard set by the department. While there will not be any general shake-up, the delinquent ones will be warned that they must change their ways. Several of them will be dismissed and a considerable number reduced in salary."

From this time on, non-acceptance of Mr. Williams' revolutionary and erroneous constructions of the immigration laws, spelt "incapacity"

and "insubordination," and inspectors maintaining their independence and the established standards were removed, degraded or reprimanded. It was at least an arguable question with inspectors whether Mr. Williams' views were not binding upon his subordinates, despite the fact that the Secretary of Commerce and Labor alone is vested with power to make regulations not inconsistent with law and lay down general principles to guide inspectors, but, in any event, adoption of the new standards was the line of least resistance for them, and would not jeopardize the bread and butter their wives and children needed. Numerous additional methods were adopted, to enforce the new and revolutionary principles of construction of the immigration laws. Members of boards of inquiry were required to report their action in detail in every case, in tabulated form, and woe to the inspector who exercised any discretion in favor of the immigrants, particularly if he disregarded a really inconsequential medical certificate, such as three pounds underweight or the like! Inspectors were warned, verbally or in writing, that they must leave their sympathy behind them, if they used decent discretion vested in them by law in such cases, in favor of immigrants. Instructions in the law for proposed examinations were prepared for them, expounding the new gospel, and despite civil-service rules, such examinations have now even been made compulsory. The contents of the written recommendations of the Commissioner against admissions on appeal, percolated down the line of inspectors, while the Secretary's occasional opinions sustaining appeals were kept secret. Chairmen of Boards of Special Inquiry were warned that they would be held personally responsible for alleged "improper" admissions, measured by the new standards, and boards supposed to be exercising judicial power were not merely told how they must decide cases, but even sometimes informed that "Washington wanted to decide certain classes of cases itself," so that "exclusion should be ordered," even if occasionally not within the harsh new standards. In addition, inspectors were directed to formulate their determinations in stereotyped form, so as to conceal their blunders of law and fact, and prevent freer correction of their errors on appeal or by possible judicial review. Because the new methods resulted in frequent blunders which even Mr. Williams occasionally would not tolerate, however, or have exposed in Washington on appeal, the Commissioner created a new "Board of Special Inquiry," before which such cases as he became specially interested in, were brought for rehearing, after orders of exclusion had been rendered, and these special tribunals were permitted to exercise

more discretion. It is to the action of these special boards that the advocates of the present system point, when they attempt to refute the claim that the law is misapplied by the rank and file of the inspectors, but, obviously, these illustrations prove nothing of the kind. So also, on the rare occasion when a visitor is permitted at these star-chamber hearings, a different atmosphere prevails for the time being. Moreover, as was pointed out in an able article in the New York German *Morgen Journal* of May 28 last (which newspaper has taken the lead in exposing Ellis Island "despotism and anarchy"), Commissioner Williams arranges receptions on Ellis Island for his superiors, as did Prince Potemkin for his sovereign, Empress Catherine, by creating an artificial fairyland for that particular occasion, which prevents the visitor from seeing anything, except what has been specially prepared for his view! It is a mystery for other less exalted visitors also, when they contrast the action taken in their presence with the cold records of exclusions in the scores of cases which they did not hear tried, to account for the strange variances, but to the initiated the explanation is at hand.

To return, however, to Mr. Williams' official career, on June 28, 1909, he marked the close of his first month's tenure by issuing his famous printed \$25 circular, which was published in the daily press at the time, and reprinted in his first annual report (Report of Commissioner-General of Immigration for 1909, p. 133), reading as follows:

"No. 23949

June 28, 1909

NOTICE CONCERNING INDIGENT IMMIGRANTS

Certain steamship companies are bringing to this port many immigrants whose funds are manifestly inadequate for their proper support until such time as they are likely to obtain profitable employment. Such action is improper and must cease. In the absence of a statutory provision, no hard and fast rule can be laid down as to the amount of money an immigrant must bring with him, but in most cases it will be unsafe for immigrants to arrive with less than twenty-five dollars (\$25.00), besides railroad ticket to destination, while in many instances they should have more. They must, in addition, of course, satisfy the authorities that they will not become charges either on public or private charity. Only in instances deemed by the Government to be of exceptional merit will gifts to destitute immigrants after arrival be considered in determining whether or not they are qualified to land; for except

where such gifts are to those legally entitled to support (as to wives, minor children, etc.) the recipients stand here as objects of private charity, and our statutes do not contemplate that such aliens shall enter the country.

WILLIAM WILLIAMS, *Commissioner.*"

Congress had been asked to establish a \$25 cash qualification for immigrants, but rejected the bill in 1907, yet Mr. Williams, two years to the circular, for the inspectors were not advised what the exceptions later, usurped legislative authority by enacting it by his ukase for "most cases." The saving clause "most cases" adds mere confusion were, and it is understood that only the special order of the Commissioner justifies making an exception. Even the Secretary of Commerce and Labor has no authority to make such a regulation, his power to prescribe regulations being expressly limited to conformity with the law, and the courts and the head of the department had held previously that only persons under affirmative physical disability, could be excluded under the "likely to become a public charge" clause, but the Secretary's subordinate assumed the power thus to legislate! Moreover, the rule was at once applied retroactively, to persons who embarked abroad before its promulgation, and could easily have brought that amount or more money with them! Notwithstanding an authoritative opinion from the solicitor of his department, based upon the opinion of the courts, to the effect that even persons receiving or likely to receive "private charity," as distinguished from "public charge," i. e., charge upon the state or one of its subdivisions, are not within the statute, it was now ordained that immigrants must also show that they are not likely to become charges on "private charity," either, and in order to avoid any possible, reasonable, limited, construction of the new phrase "private charity," it was ordained at the same time that "only in cases deemed by the government to be of exceptional merit, will gifts to destitute immigrants after arrival be considered, in determining whether or not they are qualified to land," for persons will be regarded as "objects of private charity," where such "gifts are to persons other than those legally entitled to support, as to wives, minor children, etc."

This latter passage of the circular of June 28, 1909, is even more serious and more fallacious than the former part, for it is well settled that immigrants, for whom positions have not been secured before arrival, are entitled to have "taken into account all the means of care

or support that are provided for the passenger and available for his benefit," even private organized charitable aid, to quote the language of Judge Brown in the leading case of *In re Day*, 27 F. R., 678. Instead of excluding offers of aid from brothers to sisters, uncles to nephews or nieces, or even friend to friend, on the theory that they are not "legally obliged to support each other," the law and public policy favor such aid, as worth far more than a \$25 cash requirement, especially as in the case of thousands of excluded immigrants, such relatives and friends are ready to make the obligation a legally enforceable one by giving an adequate bond, under a provision of the statute which the government almost invariably declines to exercise. In fact, as was well said by the Committee of Congress in 1891, which reported the closely related "assisted immigrant provision," which is also being harshly and erroneously construed:

"Assisted immigration is of two kinds: Those assisted by friends from this side of the water is the best class of immigration, for they have relatives or friends here who will care for them in their untried surroundings. But the immigrant assisted from the other side usually has no friends here, and if any on the other side, their chief interest is in getting rid of what is likely soon to become a burden. The assisted ticket immigrant should not be made an excluded class, but our experience has been so unfortunate that it is prudent to have him show affirmatively that he does not belong to one of the excluded classes."

Enough has already been said to show how *revolutionary and erroneous* this circular of June 28, 1909, was. By reason of it, exclusions increased so much that 200 immigrants were deported in a single day from Ellis Island in July, 1909.

In view of these conditions, Abram I. Elkus, the present writer and others, were appealed to, to secure justice for some of these unfortunate immigrants, and appeals to the Secretary of Commerce and Labor were taken in the case of fifteen Jewish fugitives from Russian despotism on June 30, 1909, who had been excluded under this illegal circular, and a request for an oral hearing made, in view of the importance of the group of cases, but, if that were not practicable, that opportunity to submit briefs be accorded. Without even replying to this request, and granting either form of hearing, the then Assistant Secretary of Commerce and Labor, Ormsby McHarg, dismissed all fifteen of the appeals, and eleven of the unfortunates were actually deported, before their counsel knew of the determination. Habeas

corpus proceedings were instituted, however, for the remaining four, and after Judge Hand had overruled the Government's preliminary objections to the jurisdiction of the court, and directed Commissioner Williams and his assistants to appear, with their records and papers for examination in open court, all four aliens were admitted by executive action, pending an adjournment, and the determination of the test case thus prevented in July, 1909. The brief in the first of these cases, entitled "Matter of Skuratowski," was, however, printed and extensively circulated, in the hope that such occurrences in the future would be prevented.

Some of the arguments made on Mr. Williams' behalf, to sustain this circular, have already been considered. An important and most suggestive one has been reserved until now, however, and this was that it was seriously urged that the circular in question was no regulation, but was directed to steamship companies merely, and was not binding upon the inspectors. The peculiar form of the circular lent color to this claim, it being thus sought to take the case outside of the line of cases with which Mr. Williams was familiar of yore, holding that while the courts in general have no jurisdiction to reverse excluding decisions by executive officers in immigration cases, they should take jurisdiction where the inspector's action was constrained by an illegal regulation, for there the inspectors have not even jurisdiction to err in the exercise of their own judgment. Said Judge Lacombe in the leading case of *In re Kornmehl*, 87 Fed. Rep., 315:

"Rules and regulations may be made to carry out the statutes and facilitate the exclusion and return of persons belonging to the classes whose immigration Congress has forbidden, but no mere rule of the Department can operate to exclude persons not belonging to one or the other of the classes named in the statute. . . . The alien is entitled to the honest decision of the inspection officers, wholly untrammelled by any instructions not authorized by the statute."

Accordingly, Mr. Williams in framing this circular, did not specifically direct it to the inspectors, and it was seriously urged on behalf of Mr. Williams that this circular was not binding upon his inspectors, although posted in the board rooms, and published in the newspapers, and although disregard of its terms was treated as incapacity and insubordination! In fact, subsequent to this hearing, as this argument did not impress the court very favorably, the later revolutionary constructions or rather misconstructions, of law evolved by the Com-

missioner were not put forth in printed form, and are more difficult to prove; and even this circular of June 28, 1909, was physically removed from the board rooms, although reprinted in the report of 1909. In fact, as late as December 10, 1910, in the case of one Fischel Bernstein, 18 years of age, healthy, able to read and write, a tailor, and going to his uncle residing here, the member of the Board of Special Inquiry who examined the immigrant had this supposed money qualification so firmly impressed on his mind that he even asked the uncle, "Why didn't you also send him enough money to comply with the immigration laws upon his arrival?" This alien was excluded, and the appeal to Washington was dismissed, but when Commissioner Williams' attention was called to this passage, and to the desirability of making this a test case on habeas corpus, the immigrant was promptly admitted. These circumstances explain why the changes in the law, as administered, have been made so furtively, and why only the initiated realize how completely the statute has been *changed* by non-reviewable administrative methods.

Recent judicial decisions establish the proposition that it is a denial of due process of law, which justifies judicial intervention, if evidence on application for admission is withheld by the government from the examination of the immigrant or his counsel, but is nevertheless submitted to the reviewing body, or after being submitted, is withheld by the immigration officials from consideration on appeal. (See: *In re Can Pon*, 168 F. R., 479, C. C. A.; *Chin Yow vs. U. S.*, 208 U. S., 8; *Hopkins vs. Fachant*, 130 F. R., 838, C. C. A.; *Davies vs. Manolies*, 179 F. R., 818, C. C. A.). And where mere conjecture is submitted for evidence (*U. S. vs. Wong Chong*, 92 F. R., 141, Coxe, J.). This departure from due process of law, both in hearings before Boards of Special Inquiry and on appeal, is a matter of constant occurrence, to the prejudice of the immigrant who is thereby kept ignorant of the evidence against him. Records on appeal which have been examined show that in numerous instances, members of the Boards of Special Inquiry and Commissioners of Immigration attempt to decide cases on arbitrary assumptions, where, contrary to law, facts warranting them do not appear in the "evidence" sent up on appeal, and which assumptions have in reality no basis in fact. A common illustration of the denial of due process of law is the assumption that the occupation of the applicant is or is not a "congested industry," so as to make it probable that he can not secure occupation in it after his arrival, the contract labor law provisions preventing his securing a position before

arrival. Frequently, unwarranted assumptions are made that money actually deposited and offers to secure positions are "charity," and are not even made bona fide. Courts recognize the necessary limitations upon their right to take judicial notice of matters in general, especially where the matter is not positively known or is in doubt or relates to a subject which is constantly changing. (See: *Austin vs. Texas*, 179 U. S., 343, 345; *Am. Sulphate Co. vs. D. Gross Co.*, 157 F. R., 660, C. C. A.).

The theory of the Immigration Act is (Sec. 25) that decisions by the Boards of Special Inquiry shall be "rendered solely upon the evidence adduced before the Board of Special Inquiry," in the presence of the immigrant or his counsel, so that the immigrant may know what he has to meet. This is utterly inconsistent with the assumption that inspectors may take judicial notice, without the production of evidence, of alleged congestion in particular places and vocations, for not only is it impossible, from the very nature of the ever-varying and complex conditions involved, for \$1,500 inspectors or any persons, to know such extraneous facts accurately, but they are unquestionably required to enter all the evidence in the minutes, in the presence of the immigrant, so that he may know what he has to meet, and this plain mandate of the statute as to such alleged congestion, is thus always ignored, to his detriment.

II.

The Immigration Act establishes as an excluded class "all children under sixteen years of age, unaccompanied by one or both of their parents, at the discretion of the Secretary of Commerce and Labor, or under such regulations as he may from time to time prescribe." Under this statute, the Secretary very properly established the rule that children shall not be permitted to enter the United States if it appears, or the circumstances indicate, that they are to be placed in forced or "padrone" servitude, or in any employment unsuited to their years, which implies conversely that in other cases they should be freely admitted. It has, however, been the general practice to exclude such immigrants, even where the matters referred to in the Secretary's rule are affirmatively and satisfactorily disproved. In fact, Commissioner Williams, in a recent circular letter entitled "Information as to the Immigration Laws and Their Execution," says "all children under sixteen, unaccompanied by either parent, will be held at Ellis Island for special investigation, and (a) where the parents are abroad, they will, as a rule, be deported; if admitted at all, this will only be

on bond, but the Secretary will not admit even on bond, except in instances presenting in his opinion special merit; (b) where it is claimed that the parents are in the United States, such children will usually be held at Ellis Island until the parents have been heard from." It is natural that under such instructions, most unaccompanied children under sixteen are certain to be excluded. This subject, therefore, presents two features: (1) the statute has vested the Secretary, not the Commissioner, with power to regulate this matter by rule; and (2) the regulation established by the Secretary, pursuant to law, indicates that such children are eligible for entry, except in the cases therein referred to; the Commissioner's rule obviously is inconsistent with the regulation, and effects the deportation of young children who came over in reliance upon the Secretary's regulation and who are admissible pursuant to it, thereby entailing much hardship, particularly for classes who are better-to-do. Another, though less important, question is whether it was intended to limit the admission of children to the extent the Commissioner's rule attempts, in view of the hardships and dangers, on such unanticipated returning voyages attending such exclusion, especially where young girls are involved.

Despite the comprehensive language of Section 26 of the present act, giving the fullest discretionary power to the Secretary to admit immigrants under bonds, unless suffering from a loathsome or dangerous contagious disease, the Department rarely takes bonds, except to avoid separation of families. Cases accordingly arise involving the grossest hardship and oppression, but the courts have declared themselves powerless to review the discretion of the Department (*U. S. ex rel. Chanin vs. Williams*, 177 F. R., 629, C. C. A.). The right and wisdom of freely taking bonds in doubtful cases was strongly emphasized by the Government through Secretary Fairchild in an able opinion some years ago (Treasury Decision No. 7698), and has also met with strong judicial approval (*U. S. vs. Lipkis*, 56 Fed. Rep. 427). An adequate bond not merely protects the Government, but makes it to the surety's interest to prevent his protégé from becoming a "public charge." The objection to bonds is placed chiefly upon the ground that sureties often are or become irresponsible, or that immigrants may disappear. That is a matter easily curable by administration, as the law provides specifically that bonds may be taken by the Secretary of Commerce and Labor "in such amount and containing such conditions as he may prescribe."

The present critical conditions are promoted through the evolution

of still newer complicating doctrines. We are now told that the inspectors are to decide, not merely whether the alien himself is likely to become a public charge here, but whether his family in Russia, for instance, is, whom he has left abroad until he has been enabled to establish a home for them here; whether they, or any of them, are for any reason or on any doctrine of probabilities, likely to be excludable if they should in the future come over here. All of these matters are to be considered at the time that the head of the family himself comes over, and often by ignorant, coerced inspectors, unfamiliar with conditions abroad, and incapable of questioning intelligently as to such difficult matters, which are wholly beyond their ken. This is being done, moreover, on the theory of "avoiding hardship attending the separation of families." Instead of continuing the time-honored method, which has worked well in hundreds of thousands of cases among Russian Jewish immigrants and others, of permitting the male head of the family to find employment and build a home here, and save enough to send for his family, he is now likely to be excluded on entry because of uncertainties on these points, unless he brings his family with him at once, in which event the chances of their becoming public charges will be enormously increased, and the probabilities are that the whole family will be *properly* excluded on that ground, or will be so handicapped after arrival that they will in fact become public charges or charges on private charity. However good and humane the purpose may be, which underlies this new principle, it is bound, in practice, to create hardship and injustice.

So also the practice has now been developed of holding inquiries before the "Boards of Special Inquiry" prior to the arrival of witnesses for the alien, and at which, accordingly, he alone testifies. At the conclusion of his testimony, contrary to law, as his case is really not concluded, his exclusion is often ordered, and if, when witnesses arrive, the case is reopened (in the discretion of the Commissioner), it is often either disposed of on the avowed ground that it has already been prejudged upon the basis of his testimony alone, or because ordering admission of an alien previously excluded would be dangerous for the inspectors, as tending toward "insubordination" or "incapacity." To aggravate such conditions, obstacles have been placed in the way of aliens promptly communicating with or sending for their relatives as witnesses or advisers, instead of encouraging them to do so and advising them of this fundamental right, and hearings are often conducted so as to bring out only matters adverse to the alien, who is uniformly

deprived of counsel, until appeal is taken, and who is ignorant of his rights and even of our language and procedure. The Immigration Commission has properly demanded that these hearings be public hereafter, though nothing in the present law, as authoritatively construed by the courts and by President Roosevelt's Ellis Island Commission, denies counsel to the immigrant. On the other hand, deportation even now often takes place before witnesses arrive and before appeals can be taken, and it has become common to delay decisions on appeals until immediately before deportation, cutting off opportunities for judicial review, and often even for seeing relatives and securing funds or comforts for the sad return voyage.

So also, the medical examinations have become more rigid, including, for instance, such items as alleged "three pounds underweight," and, under prevailing demoralization, Boards of Special Inquiry are actually coerced into applying these certificates to vocations of immigrants and their families, upon which they have absolutely no bearing, as indicating "likelihood to become public charges," the physicians not having had the evidence before them of the immigrant's occupation. This works particular hardship upon the Russian Jew, with his deceptive appearance of slight physique, particularly at the end of abnormal conditions attending living in the badly conducted steerage, after being deprived of appropriate food, because of observance of the Jewish dietary laws.

While proposed new legislation involves questions of national policy as to which men may differ, there is no room for difference on the proposition that subsisting laws should be fairly and reasonably enforced, and that no man, not even the poor fugitive from Russian oppression and hatred, should be deprived of a fair and just hearing and determination upon his right to enter. In view of such conditions, the "Immigration Commission," in its "Brief Statement of Conclusions and Recommendations" (pp. 24-5), has reported that "in justice to the immigrant and to the country as well, the character of these boards (of special inquiry) should be improved. They should be composed of men whose ability and training fit them for the judicial functions performed," and the Commission has put its finger on the real basis for the weakness of these Boards, in saying that "the fact that they are selected by the Commissioner of Immigration at the ports where they serve, tends to impair the judicial character of the board and to influence its members in a greater or less degree to reflect in their decisions the attitude of the Commissioner in determining the cases." In fact, until June 1, 1909, our statutes were reasonably clear and fairly

well understood by inspectors and immigrants, and the attempt by administrative interpretation to *change* the law, is responsible for the plight of inspector and immigrant.

The Immigration Commission points out that the fact that nearly fifty per cent of the appeals from exclusions taken to the Secretary of Commerce and Labor are sustained, proves inefficiency of administration below, and that similar blunders must take place in cases not appealed. In fact, however, despite the desire of the Secretary and the Assistant Secretary to do justice to the immigrant, a large number of appeals are improperly overruled, as well, since adequate machinery for hearing them is not existent, and because the presumption of the correctness of a decision appealed from largely obtains, especially as the officials on appeal realize that they do not themselves see the immigrants and their witnesses, and the Commissioner commonly recommends affirmance, and because of the astonishing ground for denying justice in individual cases evolved by the restrictionists, that admissions on appeal should be discountenanced, because tending to weaken the administration of the law in other cases. (Prescott F. Hall on "Immigration," p. 296). But the difficulty is greater than this, for, as above pointed out, a peculiar combination of circumstances has destroyed standards and principles of construction in the practical administration of our immigration laws.

That "our Government is a Government of Laws and not of Men!" is a fundamental principle, handed down to us from Revolutionary days, which our Supreme Court has often strongly emphasized. In an able article bearing this very title, published in the *North American Review*, January, 1911, Mr. Justice Lurton points out the grave dangers confronting us by a disregard of this principle, and asks: "Which shall it be, a government of law or a government of men? As the alternative to a government of laws is a despotism, whether the despots be many or one, benevolent or malignant, the question admits of but one answer." Can we afford to ignore this national policy in our immigration laws? We have made decisions under our immigration laws, non-reviewable in the courts, though the rights and fortunes of well-nigh a million persons a year are involved. Originally, we had some judicial decisions, defining these terms of our laws, to guide us. Until the Immigration Bureau was transferred from the Treasury Department to the newly created Department of Commerce and Labor, digests of decisions of the courts and of the Department were printed in pamphlet form (the last one twelve years ago), and decisions were

also published weekly, as rendered, and the employees of the Immigration Bureau were engaged in enforcing the law as thus interpreted for them by the courts and in publicly rendered authoritative decisions of the heads of the Department, which also enabled friends of immigrants to intelligently advise the latter while abroad whether they had a right to enter. There was some relationship between the law and its administration, and though judicial review ceased, law and order nevertheless prevailed, instead of anarchy and caprice. With the advent, within the past two years, of one of two doctrinaires into office, all this has been changed. Their own narrow and erroneous opinions and beliefs of what is best for the country have been substituted for law, and conditions of despotism have been built up, the extent of which Secretary Nagel and Assistant Secretary Cable themselves can not realize.

The fact that the Immigration Commission made various suggestions for the consideration of Congress, in the direction of enacting new laws more restrictive in character, also had, despite its criticism of unjust and oppressive methods of administration, a bad effect under prevailing lawlessness at Ellis Island, and it was reported to the writer last December that action on the part of Congress had been anticipated at Ellis Island and proposed restrictive measures had been already enforced, under color of administration of *subsisting* laws. Moreover, as the national Immigration Commission performed almost all its field work in 1907 and 1908, it had little occasion to investigate the conditions subsequently developed under Commissioner Williams, nor did it hold public hearings and take evidence at which such matters could easily have been pointed out. If it had, it probably would have blamed the inspectors less, and Commissioner Williams more, for prevailing lawlessness, and been more disposed to agree with President Roosevelt's Ellis Island Commission of 1903, which reported, before these new constructions of law were evolved:

"Criticism has been made of the personnel of these Boards of Inquiry, it being claimed that the work was so important that only men of the very highest grade be employed, and that an official who is receiving a salary of only \$1,800 a year can not be expected to discharge the duties with a proper appreciation of the responsibilities involved.

"While it is true that these inspectors are not lawyers or men who have had the advantage of scientific training as a rule, yet the experience received in the handling of the immigrants, and

their personal acquaintance with years of practical precedents (provided the personnel is not frequently changed), should qualify them to an extent that any person not familiar with the subject is apt to overlook. Their rulings as to persons likely to become public charges, for example, are based not only upon the evidence offered, but also upon their experience with immigrants and their customs. It is a fact that notwithstanding the scrutiny exercised at Ellis Island, there are every year a number of immigrants returned by the city or State authorities to Ellis Island because they have become public charges."

Of course, when the old standards and judicial determinations were overthrown, all this changed, and the old precedents were set aside. In fact, if any one examines the pamphlet, "Digest of Immigration Laws and Decisions," published by the Government in 1899—the last issued—or the decisions of the courts construing the statutes, he will find, not merely that they lend no color to these new administrative rulings, but are absolutely inconsistent with them, though the provisions of the Act in controversy have not been altered since. Moreover, it is an elementary principle of law that a reenactment of statutory provisions that have received administrative construction is a legislative acceptance of such construction, so that there was absolutely no warrant for Mr. Williams's evolution of new doctrines at this late date. In fact, if the Government had continued its old course of publishing digests of authoritative decisions of the courts and the heads of the Department, and its law officers under the immigration laws—which seems to be required by the mandate of the present statute even (Section 1 of Act of 1907)—such unauthorized usurpations of legislative authority under the guise of administration could scarcely have made much headway. Nor is the policy of non-reviewability in the courts a safe one, as it has worked gross hardship in practice.

No other class of cases is beyond judicial review, yet personal liberty is even more precious than property rights. A serious and anomalous situation arises when, as to protection of their most cherished rights, thousands of persons are put beyond the reach of the court, particularly when there are presented serious questions of law affecting their rights, and when the executive tribunals deciding the cases act behind closed doors. Since Revolutionary days, when the famous Massachusetts Bill of Rights was adopted, we have recognized that ours is a "government of laws, and not of men." When executive action is made non-reviewable by the courts, confusion, demoralization

and injustice are bound to result. There is no danger of the courts admitting persons really incompetent, nor even of their reviewing conflicting questions of fact previously determined against the immigrant by executive officers; the result would merely be to prevent illegal executive action, and to make executive rulings conform to law.

In the few recent cases in which the court has been able to assume jurisdiction, it has roundly scored the action of the immigration officials, as noted by Secretary Nagel in the passage quoted in Part I of this article. Public hearings, compilations of statutory provisions, with their authoritative constructions by the courts and heads of the Department, right to counsel, and independent and free inspectors, acting without constraint, are what is needed to restore justice at Ellis Island.

We are often told that Commissioner Williams is a man of high character and independence, who is earnest, sincere and untiring in his efforts for what he regards as the public good. I am not disposed to quarrel with these estimates of him, but we also know that most of the mischief that has been wrought in history has been done by well-meaning fanatics. The issue on Ellis Island is really whether this is a "government of laws or of men!"

The excesses of the current fiscal year have, of course, at last produced a reaction. Many of the abuses here referred to were called to the attention of the Immigration Commission and the Executive Department by the Board of Delegates of the Union of American Hebrew Congregations, the American Jewish Committee and the Independent Order B'nai B'rith jointly last November, in their demand for mere justice for the poor oppressed immigrants. No discrimination against Jewish immigrants was claimed, but it was pointed out that the fate of the poor returned Jewish immigrants in benighted Russia, which treats even his emigration as a *crime*, is ten times as serious as that of the ordinary immigrant. In the course of a public discussion with the present writer before the Union of American Hebrew Congregations on January 18, 1911, Secretary Nagel first publicly disseminated his own more liberal views, and these, together with more active control by him and Assistant Secretary Cable, of the affairs of the Bureau of Immigration, have had some good effects already. The writer has freely drawn on these papers in penning the present article.

Still more recently the German organizations of the United States, under the leadership of the *Morgen Journal* of New York, aided by hundreds of additional newspapers, societies and individuals through-

out the country, have demanded a public Congressional investigation of Ellis Island. Congressman Sulzer introduced and has ably advocated the passage of a resolution to this effect with provision for compulsory process for securing testimony, and a hearing on the same took place on May 29th before the House Committee on Rules, and further hearings on July 10th and 11th. The charge was also often made there that immigrants are submitted to physical brutalities on Ellis Island. It may be conceded that Commissioner Williams has not merely sought to avoid these, but has even adopted paternalistic methods of treatment for immigrants, and that the physical suffering that has been experienced is chiefly due, as the administration contends, to the failure of Congress to make adequate appropriations. The insufficiency of the appropriations, however, is itself due to the enormous increase of the past two years in the number of excluded persons and in the still greater increase in the number of detained persons; naturally, appropriations based on normal conditions do not suffice for proper maintenance of immigrants under such new conditions. Moreover, the new harshness in the treatment of children under sixteen and of aliens over forty-five—who are commonly certified for senility!—has exposed to the inconveniences of detention at Ellis Island, classes of aliens who are accustomed to better treatment than the average steerage passenger, and who are least able to stand such discomforts.

But the physical inconveniences are unimportant, compared with the more important and vital right of entry itself. Recently Commissioner Williams has himself publicly joined in the request for a public investigation. If ordered, the writer hereof confidently predicts that it will expose the most glaring illustration of lawless, arbitrary, and despotic administration, affecting the rights of thousands of unfortunates, which has ever stained our chronicles of American liberty and government by law.

JUSTICE TO IMMIGRANTS*

An important decision handed down by the U. S. Supreme Court, on October 25, 1915, in the case of Ali Gegiow and Sabas Zarikoew (immigrants from the Southeastern section of European Russia) *vs.* Byron H. Uhl,¹ as Acting Commissioner of Immigration at the Port of New York, is likely to result in securing due process of law for immigrants, on their application for admission, often denied in individual cases during the past six years, and in eliminating certain unauthorized grounds for exclusion. The Supreme Court unanimously admitted these aliens and overruled the decisions below, which had affirmed the action of the immigration authorities in excluding them from the United States, rendered by the U. S. District Court at New York and the U. S. Circuit Court of Appeals for the New York Circuit, as well as a similar decision of the Circuit Court of Appeals for the California Circuit, all of which had sustained the right of the immigration authorities to exclude immigrants as likely to become public charges on the ground of alleged unfavorable industrial conditions prevailing in the city to which the immigrant was destined.

The right of the immigration authorities to consider these alleged industrial facts, or rather to assume them without proof, and without giving the immigrants opportunity to rebut them by proof, was one of three or four dogmas unlawfully injected by former Commissioner of Immigration Williams into the administration of the immigration laws some years ago, leading to heavily increased exclusions, though he was simply a minor administrative official, not merely not vested with legislative authority thus to change the statutes, but not even with the Secretary of Labor's power to establish rules and regulations.

It was only under cover of a statute in force since 1894, providing that decisions of the immigration authorities excluding aliens from admission into the United States "shall be final, unless reversed on appeal to the Secretary of Labor," that what were really radical legislative changes could be attempted by immigration officials. This statute was invoked by the government as the chief argument to prevent judicial review in the Gegiow case also, but the Supreme Court has

* Immigrants in *American Review*, Vol. 1, No. 4 (Jan., 1916), pp. 55-63.

¹ Gegiow vs. Uhl, 239 U. S. 3. In a personal letter to me. Hon. Oscar S. Straus, former Secretary of Commerce and Labor, in whose department immigration cases fell, wrote to me under date of Oct. 29, 1915, as to this decision.

now construed it as making the decisions of these executive authorities binding on the courts only as to matters of fact, and not on the law, and rules that absence of all proof justifying an exclusion is a question of law, cognizable by the courts on behalf even of conceded aliens.

In other words, the courts are open to immigrants to secure justice for them as to questions of law, even on application for admission into the United States, despite excluding decisions by immigration inspectors and the Secretary of Labor, and an act of Congress often regarded as giving the executive authorities non-reviewable power to exclude aliens. In fact, even Secretary Nagel, the head of the Department under which Mr. Williams was serving, said publicly, though erroneously, on March 11, 1911:

“There is no more autocratic power anywhere than Congress has given the Secretary of Commerce and Labor. I can send back anybody. It is an awful power, but I try to use it to the best of my ability and no court can reverse me, though even the courts are criticizing me now.”

In describing the vesting of this power in himself, Secretary Nagel of course referred to himself impersonally, as head of his department.

The two immigrants in question arrived at Ellis Island in January, 1914, and were young men, farm laborers, of fine physique, having \$25 and \$40 respectively, in cash, had paid their own passage money and had railroad tickets to Portland, Oregon, where the one had an uncle and the other a friend, desirous of helping them get employment and aiding them meantime. On the basis of alleged recent newspaper reports, unproduced and unidentified, the immigration authorities assumed that many people were out of work at Portland, and that this would make it improbable that these immigrants, farm laborers, could get work, and, accordingly, that they were likely to become public charges; these assumptions were not called to the attention of the immigrants before their exclusion, and they were thus deprived of an opportunity to controvert them by analysis or proof. On behalf of the immigrants, it was argued in the United States Supreme Court by Max J. Kohler and Morris Jablow (with Messrs. Abram I. Elkus and Ralph Barnett joining them in the briefs) that Congress had not granted authority to consider such alleged industrial conditions to the immigrant officials, and that there was no machinery afforded for gathering such information in reliable form, nor promptly, nor were the \$1,800 a year inspectors competent to decide such difficult economic questions.

It was furthermore pointed out that the constant use of the phrase "likely to become a public charge," in the immigration laws for many years, repeatedly reenacted, as authoritatively construed by the executive officers and the courts, was fatal to such assumption of power by the immigration authorities during the past few years. It was also urged that immigrants are themselves disposed to depart from the place to which they are originally destined, if economic conditions are bad there, and that such course is aided by the government's own Information Division, and by private charities, like the Industrial Removal Office, so that conditions in the place to which they were originally destined, where their relatives and friends reside, are not very material, especially as conditions vary so much in different industries, even at the same time and place, and are so largely dependent on the willingness and ability of the immigrant to undertake particular work, as illustrated by the recent New York subway building incident.

It was furthermore pointed out that such considerations are really unnecessary, as immigration is largely automatically responsive to industrial conditions, falling off in bad times, like our panic of 1907-8, and then even resulting in heavily increased emigration to other countries of aliens already residing here. Moreover, in the case in question, due process of law on determining these issues was denied the immigrants.

These views were adopted by the United States Supreme Court in an able opinion by Mr. Justice Holmes, in the course of which he said:

" * * * It would be an amazing argument for immigration officials to refuse admission to the United States because the labor market in the United States was overburdened, and yet that would be more reasonable than refusal to admit because of reported conditions in one city." (239 U. S. 3)

As above pointed out, the supposed right to exclude on the ground of alleged unfavorable industrial conditions at the place to which the alien was bound was one of several novel and erroneous doctrines which Commissioner Williams had induced or coerced his subordinates into adopting in 1909, and which were thereafter adopted by immigration officials at some other ports, too. Though Congress had refused to establish a \$25 cash qualification for immigrants, he determined that the absence of this sum would generally make the alien inadmissible, and applied the rule retroactively to persons who had left Europe before its promulgation. Far more serious was his further assumption that aid proffered to the immigrant by relatives and friends here, in

the direction of aiding them in finding work after landing and providing for them meantime, when it came from persons not legally obligated to support the alien, was to be rejected as negligible in passing on the "likelihood to become a public charge" issue, as being only "private charity," akin to "public charge," despite authoritative rulings to the contrary by the courts and the solicitor of his department. He furthermore instructed his assistants to consider assumed general economic "congestion," and "congestion" in the immigrant's particular line, in the place to which he was destined, as further factors, and censured them for not construing the laws stringently against the immigrants.

Immediately after these orders were issued by Commissioner Williams, Messrs. Elkus and Kohler took up the cause as a labor of love, and instituted habeas corpus proceedings in July, 1909, before Judge Learned Hand, on behalf of one Skuratowski and three other Russians, to test the validity of these orders, but during their pendency the four aliens were admitted by the executive authorities into the country, thus abating the proceedings, in order to render the question as it applied to them a merely academic one, which the courts could not decide. The statute curtailing judicial review of immigration exclusions was relied upon to prevent judicial revision of his course by the Commissioner. The circulars of instructions were, also torn down by Mr. Williams from the board rooms at Ellis Island, but the doctrines therein contained have been invoked from time to time since then to exclude particular immigrants whom, for one reason or another, the immigration authorities wished to bar out, in the absence of a statutory ground for exclusion. Petitioners' brief was, however, quite widely distributed, and was subsequently reprinted in Vol. 41 of the Immigration Commission Reports, (pp. 160-181.)

Still more far-reaching was Commissioner Williams' general instruction to his subordinates that "the standards of inspection (must) be raised" and the "immigration laws strictly enforced," notwithstanding the canon of law, possibly the most important principle envolved by our whole Anglo-Saxon civilization, that "all laws in derogation of individual liberty must be strictly construed, so as to protect individual liberty," which our courts have repeatedly applied to our immigration laws. As was well said editorially by the *New York Evening Post*, July 16, 1909: "Once a foreigner has shown that he is able-bodied, free from contagious diseases, and neither a criminal, an anarchist nor polygamist, nor certain to become a public charge, he has made

out a prima-facie case for his admission. As to the fear of letting in aliens to become public charges upon public charity, it seems to us that the provision of the law which orders such immigrants back within three years after their arrival should encourage clemency at Ellis Island, rather than harshness. If the immigrants who fall into pauperism can be gotten rid of within three years, why should our immigration officers speculate excessively upon the chances of an immigrant becoming a pauper? Here, again, he should be given the benefit of the doubt—given a chance to show that what this country offers its newcomers is not poverty, but a living.”

In general, however, it was impossible to establish from the immigration records themselves that exclusion in particular cases was due to these unauthorized rulings, and no regulation embodying them has ever been promulgated by the Secretary.

In December, 1913, however, inspectors spread upon their records such alleged industrial conditions as their ground for excluding some Russian immigrants at Seattle, and Judge Neterer admitted the immigrants in habeas corpus proceedings on January 27, 1914, for the reason that this was no authorized ground for exclusion, in *Ex parte Gregory*, 210 Federal Reporter, 580, but his decision was reversed by the United States Circuit Court of Appeals, sitting in California in May, 1914, on the ground that the act restricting judicial review prevented the courts from inquiring “into the sufficiency of probative facts, or considering the reasons for conclusions reached by the officers.” Meantime the present case arose; the District Court affirmed the order of exclusion made by the immigration authorities, as did also the Circuit Court of Appeals (211 F. R., 236, *aff.* 215 F. R., 573), but, as noted above, the U. S. Supreme Court has now unanimously reversed them, and admitted these aliens.

This case is thus a convenient one upon the basis of which to consider the general right of aliens to enter the United States. The fact is commonly overlooked that Magna Charta already expressly assured due process of law to aliens on their application to enter, except in time of war, and one of the grievances of the founders of our country, expressly mentioned in the Declaration of Independence, was the Crown’s refusal to pass laws “to encourage the immigration of foreigners,” while Congress, in August, 1776, adopted a comprehensive committee report in favor of the promotion of immigration.

In her interesting volume, “They Who Knock At Our Gates,” Mary Antin makes a strong plea, on the basis of our fundamental American

charters, for the "open gate," as a natural right of man, but, truth to tell, a long line of authoritative decisions of our courts upholds the right of Congress, for the general welfare, to exclude undesirable aliens from our shores by appropriate laws, and Mary Antin herself, in later pages of her interesting booklet, is forced to recognize such limitations, even on "natural rights." This is true, despite the vigorous protests against anti-alien laws, both on constitutional grounds and on the score of public policy, embodied by Jefferson and Madison in the Kentucky and Virginia Alien and Sedition Laws Resolutions, which laws ultimately wrecked the Federalist party which had foolishly enacted them.

Nevertheless, Jefferson, in his immortal Presidential message of 1801, formulated our national policy of "right of asylum for immigrants," to which our national prosperity is so greatly due, in his famous words: "Shall oppressed humanity find no asylum on this globe?" which is re-echoed also in a subsisting statute (Rev. St. Sec. 1999), and is the test by which President Wilson condemned the recent Immigration Bill in his veto message of January 28, 1915. But so foreign was the idea of our excluding alien victims of religious or political persecution from the minds of the framers of our Government that our courts had to invoke unexpressed grants of power, not spelled out in our Constitution, in order to sustain even statutes limiting the admission of particular classes of aliens and creating novel methods of dealing with their right to enter or remain.

One principle, however, is firmly inbedded in our American jurisprudence, and that is that our fundamental law denies absolutely to any official within our land, be he high or low, be it in his relations to a fellow-citizen or to an alien, the right to prevent their treading on our sacred soil, except in as far as statutes expressly confer the right of exclusion. As said by Justice Field for our Supreme Court: "The law of our country takes care, or should take care, that not the weight of a judge's finger shall fall upon any one, except as specifically authorized." (151 U. S., 242.)

In the leading case of *Yick Wo vs. Hopkins*, 118 U. S. 356, the Supreme Court came to the defense of an obscure Chinese laundryman, whose rights were being violated by the discriminatory California municipal ordinance involved, which could not stand the test expressed by the Court in its immortal words:

"The fundamental rights to life, liberty and the pursuit of happiness, considered as individual possessions, are secured by

those maxims of constitutional law which are monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that in the famous language of the Massachusetts Bill of Rights, 'the government of the commonwealth may be a government of laws and not of men'."

Ever since Congress passed a general Immigration Law, in 1882, a large percentage of exclusions have taken place under the provision excluding persons likely to become a public charge, terms that have been in our laws since that date, and have repeatedly been construed as embracing only affirmative personal disabilities. Mere lack of money on the part of vigorous aliens, ready to work, especially if they had relatives or friends here, was repeatedly held not to render them "likely to become public charges," both by the immigration authorities and the courts. On the other hand, the courts at an early date held that in passing on the question of likelihood to become a public charge, "all the means of care or support that are provided for the passenger for his benefit must be taken into account," including proffers of aid from anyone "who by natural relation or by assumed responsibility, furnishes reasonable assurance that they will not become a charge upon the public."

In the year 1894, when Congress first enacted the statute against reviewability of decisions of exclusion, 1,389 aliens were barred by the immigration officials, as against 285,000 admitted, or about one-half of one per cent; of these, 802 were excluded as likely to become public charges. In the year ending June 30, 1910, embracing Commissioner Williams' first year of service, an army of 24,270 were excluded, as against 1,041,570 admitted, a percentage more than four times as large, despite increased rigor in refusals to sell tickets abroad; this includes 15,918 excluded as likely to become public charges, a total increase over the preceding year of nearly 14,000. The explanation for this extraordinary increase is to be found in the new erroneous dogmas, which the immigration authorities enforced as law under cover of judicial non-reviewability.

The figures for the fiscal year ending June 30, 1914—the last one before the abnormal conditions of the war—were similarly large, 33,041 debarred, as against 1,218,480 immigrant aliens admitted, of whom 15,756 were excluded as likely to become public charges and 6,537 because the physicians certified them as having some physical defect that may affect their ability to earn a living. On the other hand 4,610

were deported that year within three years after entry, for all causes, indicating that a negligible percentage actually did become public charges. To give these figures real significance, we should bear in mind that, as the Immigration Commission reported, about four times as many intending immigrants are refused transportation by the steamship companies abroad, by reason of their medical examination there, as are debarred here for all causes. The medical examinations abroad have been increasingly rigorous since Congress enacted a law, in 1903, penalizing the steamship companies heavily for every immigrant they brought over whose physical defects an adequate medical examination abroad should have disclosed.

Turning again to the Act of 1894, abridging reviewability of executive exclusions, we should remember that the percentage of exclusions was comparatively small when it was enacted and that this smaller number took place under laws which had been freely and authoritatively construed by the courts in reported decisions, under the administration of officials accustomed to yielding obedience to judicial decisions reviewing their actions; and the Treasury Department which then administered our Immigration Laws, continued to publish and distribute its own important immigration rulings, and also published, for the guidance of its officials, and others, compilations of the judicial and administrative immigration decisions in convenient form. Moreover, our medical examinations on this side of the ocean had not been so fully developed as to include certification of "physical" defects, as now, as distinguished from "medical" defects, and much therefore had then to be left to the inspection of the lay inspectors, not capable of review in courts.

Even then, however, the Supreme Court, in the leading decision construing this Act of 1894, held that

"administrative officers, when executing the provisions of a statute involving the liberty of persons, may not disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard before such officers in respect to the matters upon which that liberty depends—not necessarily an opportunity upon a regular, set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the

same time be appropriate to the nature of the case upon which such officers are required to act" (189 U. S., 86).

However, immigration officers became so accustomed to the enjoyment of the immunity that this Act against reviewability was supposed to accord to them that it was but a short step from making non-reviewable decisions to making non-reviewable laws by executive fiat. Circumstances aided them in this dangerous, anomalous experiment. The shifting of the immigration service from the Treasury Department, first to the Department of Commerce and Labor and then to the Department of Labor, left the officials without a convenient medium for publishing decisions; even the Secretary's decisions were left unprinted, and soon this led in practice to a lawless "government of men, not of laws." The decisions of the immigration officers, hitherto based on responsibility for official actions to courts sitting in public, became restricted to such supposedly non-reviewable service, presided over by labor union officials, which took strong sides on the policy of admitting immigrants.

Public unfamiliarity with the growth of the winnowing-out process abroad by means of medical examinations and foreign governmental service—which is still commonly unrecognized—led to the apparent desirability of nevertheless maintaining and even increasing percentages of exclusion here, despite marked improvement in the physical quality of the immigrants. Growth of anti-immigration sentiment with increase in immigration, was another factor. With the advent of doctrinaires into office, using coercion to secure adoption of their erroneous dogmas (however sincerely entertained by them) by their subordinates, we can account for the conditions of lawlessness referred to, and this without even remembering that all the resources of the government were at the disposal of the excluding official, while the commonly poor, humble immigrant had difficulty to secure even counsel and witnesses, especially under our unfair immigration law procedure. These are some of the factors which induced the Immigration Commission (Reports I, pp. 32-33, 46) to recommend administrative amendments of the law, to secure justice to the immigrant, on his application for entry¹. Though

¹ Their recommendation reads: "That Section 25 of the Immigration act of 1907 be amended to provide that boards of special inquiry should be appointed by the Secretary of Commerce and Labor, and that they should be composed of men whose ability and training qualify them for the performance of judicial functions; that the provisions compelling their hearings to be separate and apart from the public should be repealed, and that an additional Assistant Secretary of Commerce and Labor to assist in reviewing such appeals be created."

Congress has thus far turned a deaf ear to these recommendations, our most august court is securing the alien due process of law, as noted.

The supposedly small amount of money possessed by the aliens, and the absence of relatives here legally obligated to support them, are factors often emphasized, under these new theories, in their bearings on supposed likelihood to become public charges. But the Immigration Commission reported that the average amount of money brought along by aliens between 1899 and 1910 was only \$21.57, and Commissioner Williams' \$25 quota would have excluded a large majority of the immigrants coming over. In fact, the average amount of cash in the possession of all residents of this country, according to our Treasury Department, is only about \$33.59.

Far more serious, however, than this, was the attempt to disregard the aid tendered to the immigrants by relatives and friends residing here, not legally obligated to support them, in finding employment here, and looking after them meantime. An overwhelming majority of the immigrants coming over here go to relatives or friends already residing here, very few of whom are "legally obligated to support them," and this circumstance, worth far more than a few dollars or a few hundred dollars, explains why the great majority of immigrants landing here succeed in this new land of promise. Thus, out of 1,218,480 immigrants admitted during the year ending June 30, 1914, nearly a million were going to relatives, and more than 150,000 others to friends; the age, sex and conjugal conditions statistics show that merely a very small fraction of these were going to relatives legally obligated to support them.

In fact scarcely any aliens are admitted if less than sixteen and coming over alone, while practically no alien over 45 can get in, because he is almost certain to be certified for "senility." Our contract labor laws, of course, forbid aliens getting employment here before arrival, so the aid of friends *after* arrival is invaluable. Congress, as well as the courts, recognized the great value of this factor, and the joint committee which framed the Immigration Act of 1891 well said that immigrants "assisted by friends from this side of the water is the best class of immigration, for they have relatives or friends here who will care for them in their untried surroundings."

In spite of the salutary, beneficent experiences of decades, the new doctrine suddenly stamped such prospective aid as "charity", forbidden by the provisions against admitting aliens likely to become "public charges", notwithstanding an unbroken line of authorities,

judicial and administrative, that "public charge" means "charge upon the state or one of its official agencies", and excludes even those in privately supported charitable institutions.

Moreover, the law authorizes the Secretary to exact a surety bond as a condition of entry, so that in doubtful cases preferred aid, not legally obligatory, can be turned into legally enforceable obligations; the immigration authorities, however, rarely grant applications for admission under bond, ordering deportation instead on this ground, and the courts may not review the Secretary's discretion in this matter.

Commonly, treaties with foreign countries grant their subjects right to enter, and assure them due process of law upon application for entry, but these treaties have been authoritatively construed not to prevent Congress, even at the forum of international law, from excluding the physically, mentally or morally diseased, or persons in fact likely to become public charges, though it may well be doubted whether they would not be violated by the application of such arbitrary and unreasonable doctrine as that just considered, or even by statutes excluding persons not in fact undesirable. There was a class of distinguished publicists who argued in favor of the natural right of men to enter a foreign country, and those who are interested may find a compilation of the views of these writers on international law in Sibley and Elias' able British work on "The Aliens Act and the Right of Asylum", but these abstract theories have given way to practical expediency, even in the domain of international law.

To conclude, then, the alien is entitled as of right to enter our country, in accord with its most cherished traditions and constitutional principles, except in as far as appropriate general laws, regardless of race and creed, forbid entry; and all presumptions are in favor of individual liberty, in construing such statutes in derogation of personal liberty. Treaties often form an additional safeguard for the alien, and he is entitled to a "government of laws, not of men" in passing on his rights. This does not mean that existing statutory restraints excluding various classes should not be enforced and should not be continued on our statute books, for they answer a useful purpose, both to us and to the prospective immigrant. It does not mean, however, that even for the immigrant knocking at our gates it is true, to conclude with the ruling of the Supreme Court in *Yick Wo vs. Hopkins*, just authoritatively reaffirmed in the *Arizona Alien Act* decision, (*Truax vs. Raich* 239, U. S. 33), that

"the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

IMMIGRATION AND THE RIGHT OF ASYLUM FOR THE PERSECUTED*

It is reported that when President Roosevelt called the national Immigration Commission together, early in 1907, right after the bill which provided for establishing the literacy test and other restrictive clauses had given way to the argument that thorough investigation and study were first necessary, and not precipitate action, he remarked that he considered the immigration question next to the most important, if not the most important, before the American public at that time. Today, too, the importance of this issue should not be underestimated, when efforts are being revived to pass the Dillingham-Burnett Bill in no less objectionable form, efforts which very nearly succeeded in the last Congress, despite President Taft's veto. Our economic future is seriously menaced by the proposed exclusion of the illiterate manual labor, upon which we have so greatly depended in the past, and a cornerstone of American national policy is being assailed by the proposal hereafter to exclude the persecuted illiterate religious and political refugee from our shores, and to establish invidious race lines and discriminations as conditions for admission. Nay, more, a severe blow would be dealt to our whole Western civilization, to which the "Humanitarian Diplomacy of the United States" has contributed so greatly—to use Oscar S. Straus' apt characterization (*Proceedings, Am. Society of International Law*, April, 1912, pp. 45-54)—if our Government thus stultifies itself and abandons its time-honored policy of granting national asylum for, and seeking to relieve, religious and political persecution abroad, as evidence in such historic instances as our intervention on behalf of persecuted Greece, on behalf of Christian missionary endeavors in Turkey and China, and on behalf of Jewish emancipation in Switzerland, Russia and Roumania, and on behalf of the Damascus blood accusation sufferers of 1840. Said Sir Herbert Samuel in the House of Commons on April 18, 1905, when joining distinguished Christians in demanding continuance of right of asylum in favor of religious and political refugees by an appropriate clause in the British Aliens Act:

* Address delivered before the Eastern Council of Reform Rabbis, Oct. 20, 1913, printed in "Jewish Comment," Oct. 24 and 31, 36 pp., 1913, and reprinted in pamphlet form and then in "Hearings before House of Representatives Committee on Immigration, 63rd Congress, 2nd Session," Dec. 11-12, pp. 199-210, 1913.

“It is the grossest hypocrisy to pass resolutions of sympathy with the victims of misgovernment in Russia, and when they fly to us for refuge, to shut the door in their faces” (Parliamentary Debates, 4th Series, Vol. 145, pp. 732-3).

It was my privilege to appear publicly frequently during the past few years in opposition to such plans to abandon our *present policy of regulating immigration* by excluding undesirables, as expressed in our present laws, for the new plan of *arbitrarily restricting immigration*, as a member of the Board of Delegates on Civil Rights of the Union of American Hebrew Congregations, under the leadership of our indefatigable chairman, Hon. Simon Wolf, and to be one of the draftsmen of the “recommendations” submitted to the Immigration Commission jointly by the American Jewish Committee, the Board of Delegates and the Independent Order B’nai B’rith. That American citizens of the Jewish persuasion are not alone in regarding this question as one of religious interest is strikingly illustrated by the fact that Vol. 41 of the Immigration Commission’s reports, entitled “Statements and Recommendations Submitted by Societies and Organizations Interested in the Subject of Immigration,” contains not merely this Jewish document, but statements from the “International Committee of the Young Men’s Christian Association” and the “Department of Immigration of the Board of Home Missions of the Presbyterian Church in the United States,” which are conducting excellent work among our immigrants of a non-proselytizing character. Similarly, every denomination and race stock was represented in the large delegation which urged President Taft last February to veto the Dillingham-Burnett Bill, while, on the other hand, President Eliot publicly maintains that the present restrictive movement is largely an anti-Catholic one. (Letter dated January 10, 1911, to the National Liberal Immigration League.) While the Jews of the United States approach this subject, as all good citizens should, solely from the point of view of the best interests of our beloved country, they should uphold what Carl Schurz well called “True Americanism,” and for that reason are deeply concerned with the fortunes of their persecuted co-religionists from Europe, who are denied so often abroad, not merely the rights of citizenship, but even the right to life and liberty because of their faith. It has been our historical basic policy to afford here an asylum to the oppressed of all the world, who are not morally, physically or mentally diseased, and this policy, which has done so much for American government and American institutions, is now menaced.

It is now proposed, not merely to exclude undesirables, but to arbitrarily check immigration by the imposition of a literacy test, which, it is figured, will exclude 26 per cent of the immigrants, and still further, by limiting, the percentage of arrivals from every nationality to a maximum of 10 per cent of the number of such nationality per annum already resident here, based upon country of birth. Our laws already effectively exclude and deport the criminal, the insane, the immoral, the diseased, the anarchist, the pauper and those likely to become paupers, and the contract laborers. How effective this exclusion already is, few recognize. During the fiscal year ending June 30, 1913, 19,938 aliens were debarred at our ports, as against the 1,197,892 admitted, or over 16 out of every 1,000 were excluded. This included 1,224 Hebrews debarred against 101,330 admitted, and 3,461 more aliens were deported by executive warrant after admission, including 253 Hebrews. The 1,200,000 immigrants admitted this past year are offset in part, however, by the departure of over 308,000 alien immigrants during the same period.

Earlier during Mr. Williams' regime at Ellis Island, before the courts and public opinion somewhat restrained him, the percentage of exclusions was even greater, having been over 23 out of every 1,000 for the fiscal year 1910, and in some months, even for Jewish immigrants, as many as 32 out of every 1,000, while prior to 1909 it was commonly less than 1 per cent. As regards the Russian Jewish immigrant, exclusion does not mean merely economic ruin—because the immigrants almost invariably burn their bridges behind them—but imprisonment or death, if discovered by Russia, for emigration from that inferno is itself commonly a crime. These high percentages of exclusion were, moreover, reached, notwithstanding the fact that the standards of inspection by the steamship companies abroad had become much more stringent, by reason of heavy penalties the steamship companies have recently been subjected to for bringing over persons who were excludable, and the Immigration Commission ascertained that about four times as many aliens are debarred by the steamship companies abroad, as a result of their examinations there, as are excluded here on our shores. How many thousands more are kept off by the reports of exclusions each year, no one can figure.

Of course, the large majority of exclusions here are based upon alleged "likelihood to become a public charge," to which new tests, never intended by Congress nor approved by the courts, nor enforced by Mr. Williams' predecessors, were applied, from June, 1909 on, chiefly

accounting for the large increase in exclusions. In the face of these figures it can, of course, not be contended that our laws, reasonably administered, do not already debar substantially all actually undesirable.

The Immigration Commission, however, in its report, found that there is an oversupply of unskilled labor in the United States, and solely because of this economic reason recommended further restrictive measures. They did not find that wages have decreased, nor was any proof adduced of this alleged oversupply, except in the Pennsylvania coal regions. This oversupply, they concluded, without adequate grounds for their view, endangers the American standard of living. All other alleged evils of immigration were in effect disapproved by the Commission's investigations. This is not an appropriate place for considering this economic argument; it has been splendidly refuted in Hourwich's admirable work, "Immigration and Labor," in the able report on the Dillingham-Burnett Bill, prepared by ex-Secretary Nagel and adopted in President Taft's veto message, in President Eliot's writings, and elsewhere.

Just a few words regarding it in passing. The conclusion rests entirely on the field investigations conducted by the Immigration Commission in 1907-1908, when we were still in the midst of the abnormal conditions of the panic of that year; and naturally when panics close down factories and other mercantile establishments, there is apparently an oversupply of labor. Nor is allowance made for the wonderful way in which immigrants respond in time of panic to industrial conditions, as evidenced, for instance, by the fact that the high-water mark of immigration of the year ending June 30, 1907, of 1,285,349 aliens not merely fell the next year to 782,870, but was accompanied by a departure from our shores in that year of the enormous number of 395,073 aliens. Nor can our opponents answer the question: where we will get the unskilled manual labor from, if immigration of illiterates be thus artificially curtailed, to build our streets, work our mines and man our farms. Only illiterate unskilled labor will, for the most part, take up this work, our native labor being in general otherwise more profitably and pleasantly employed, and really not competing with such immigrant labor at all. Economic upheaval would follow such arbitrary restriction of immigration.

Moreover, the immigration of the past year includes over 333,000 European farmers and farm laborers, nearly 28 per cent of the whole immigration (to say nothing of their wives and children), whom we

particularly need, and nearly all of whom, under an intelligently directed distribution, would go to our farms, instead of settling in congested large cities. We still have incalculable room for immigrants in our rural sections. Curiously enough, the members of Congress from the large cities, which alone receive appreciable numbers of immigrants, are almost to a man opposed to new restriction of immigration, while the country sections which do not even see the immigrants are most vehement in favor of restriction, largely through the unwise and mistaken demands of the labor unions.

Before turning from the economic to the other aspects of the question involved, it will be well, first, briefly to consider the proposed restrictive expedients in the bill the President vetoed, which are identical with the measures now pressed by Senator Smith and Congressmen Burnett and Gardner and others in the present session, while Senator Dillingham's new bill has a substitute objectionable feature:

(1) The bill established a literacy test, similar to the one which was vetoed in 1897 by President Cleveland, and which has just been vigorously opposed by ex-Secretary Nagel, ex-Secretary Straus, President Eliot, Jane Addams, Cardinal Gibbons, Governor Judson Harmon, Governor Baldwin, President A. W. Harris, President Schurman, Governor Goldsborough and hundreds of other leaders of public opinion. As President Eliot well says, "educational tests should not be applied at the moment of entrance to the United States, but at the moment of naturalization." The claims that this test would not exclude as many as 26 per cent of the immigrants over sixteen years of age, who in past years have admitted, without cross-examination, even, to the Government officials, that they cannot read or write any language or dialect, is fallacious, for investigation shows that immigrants have been understating, rather than overstating their incapacity in this respect, and injustice will arise from many mistakes by inspectors and interpreters and nervousness of immigrants even after allowing for admissibility of certain illiterate near-relatives of admissible aliens.

Moreover, private, special investigations of Jewish immigrants going to Galveston substantially confirm this percentage (26 per cent) of illiteracy, even for Jewish immigrants, and they expressly mention Hebrew and Yiddish among the languages in question, for Russian despotism, particularly of the past twenty-five years, has prevented even that large number of her Jewish subjects, including females with males (as confirmed by the Russian Census also), from learning to read even Yiddish or Hebrew! These statistics show that out of 1,333

Hebrew males going to Galveston examined down to a certain date, 12 5/100 per cent could not read any language, nor could 37 3/10 per cent females, out of 220 examined.

Members of Congress erred in assuming that practically no Jewish immigrants will be thus affected. The Immigration Commission specifically recognized the importance of continuing to keep our gates open to European refugees from religious and political persecution in its report, thus adopting the fundamental American principle which President Jefferson phrased so ably in his rhetorical question: "Shall oppressed humanity find no asylum on this globe?" and which even finds expression in a subsisting statute (Rev. St., 1909). The Commission (Vol. 1, p. 45) makes this recommendation: "While the American people, as in the past, welcome the oppressed of other lands, care should be taken that immigration be such, both in quality and quantity, as not to make too difficult the process of assimilation." Professor Jenks and Mr. Lauk of the Commission, in their book on "The Immigration Problem" (pp. 334 and 335), say: "In the judgment of the Commission, as well as of most other enlightened citizens, the United States should remain in the future, as in the past, a haven of refuge for the oppressed, whether such oppression be political or religious. Any restrictive measure should contain a provision making an exception of such cases. * * * Whatever the difficulties the administration would encounter, we clearly ought not to close our doors against those whom the common opinion of the world would consider really the subjects of oppression."

Members of Congress expressly avowed their intention of honoring these precedents in their utterances in committee and in debate, by exempting such refugees from the literacy test. The "Hearings before the Committee on Immigration and Naturalization" of the past Congress, Part 1, under date of January 11, 1912 (pp. 32 and 33), contains letters and utterances of Chairman Burnett and Mr. E. E. Hayes of California, showing that they intended to exempt all aliens "fleeing from religious persecution," and particularly Russian Jews, though the restricted language of this bill obviously fails to carry out this avowed intention. Congressman Burnett said: "I do not believe that this rule (the educational test) should apply to cases where, like the Russian Jews, the immigrant is driven from his home on account of religious persecution. Hence, should a bill like I favor become a law, I would advocate a proviso which would exempt from that test those who flee from religious persecution, provided they were otherwise admissible."

The Congressional Record (Vol. XLVIII, p. 5020), under the date of April 19, 1912, shows that the Senate adopted this phraseology from the House Bill on the assumption that it had been carefully considered there (though the latter had not yet been debated or criticised), Senator Lodge, on behalf of the Senate Committee, referring to the exodus of persecuted Jews from Russia and of Christians from Turkish dominions, whose admission was not to be barred, but erroneously construed this narrow phraseology as exempting all "persons who come here on account of religious persecution" from the literacy test. A similar misunderstanding occurred later in the House through Congressman Burnett's mistaken statement (Vol. XLIX, p. 659, December 14, 1912).

This exception is, however, so badly phrased in the pending bills as to make it doubtful if it will benefit anyone, for it is limited to persons seeking admission "solely for the purpose of escaping from religious persecution," and it will be impossible in general to establish that this is the sole motive of immigration, where the migration is to an economically more hopeful land. Secretary Nagel's written recommendation to the House Committee, dated March 28, 1912 (House Document, Sixty-second Congress, Second Session, No. 659), "that the words 'or political' be inserted between the word 'religious' and the word 'persecution', because it is apprehended that this exception is intended for the benefit of aliens fleeing from oppression and it is not easy always to determine whether the persecution alleged by such persons is of a 'religious' or 'political' nature," was simply ignored. An enormous number of desirable immigrants, whom we need here, will thus be excluded by the literacy test.

(2) The bill also discarded the well-selected language of the Dillingham Bill, with respect to persons having "physical defects that are likely to impair the ability to earn a living," and has inserted instead a clause that is certain to work much useless hardship. The measure reported by the Committee substitutes the much more sweeping phrase "which may affect ability to earn a living" (Section 3 and 9) for the substitute language, and goes farther and penalizes the steamship companies heavily for bringing over such persons. The result is that a mere possibility that the defect may affect ability to earn a living is substituted for probability as a ground for exclusion. We may accordingly find a millionaire debarred because he is lame, or an aged married woman, grandmother of an immigrant, both well to do, debarred,

because she may be slightly deaf or have a deformed finger. The language here employed is obviously recklessly ill-considered.

(3) The bill also establishes a new excluded class, to wit: "persons who cannot become eligible under existing law to become citizens of the United States by naturalization," with certain exceptions, including non-laborers of such class and their wives and children under sixteen. It would be a grave violation of our existing treaties with the countries involved, under which all their citizens, including laborers, may freely come over here. It is hard to say how sweeping this clause is, as there are all sorts of requirements for naturalization, but in any event it will exclude by this indefinite phrase, the brown and yellow races, like Hindus, Malays, Koreans, Burmese, etc. See *U. S. vs. Balsars*, 180 F. R., 694, C. C. A., in which case Mr. Louis Marshall and I intervened, because there was a disposition in some quarters then to deny naturalization to all Asiatics and persons of Asiatic origin, and a New England judge went out of his way to say that the rights of Armenians, then contested by the Government, were clearer than those of the Jews. The appellate court in the *Balsara* case used language clearly showing that already in 1790, when we passed our first naturalization bill, Congress could not have intended to refuse citizenship to Jews coming fresh from Palestine.

(4) In the new restrictive bill, introduced at this session by Senator Dillingham, he inserts in lieu of the literacy test a provision limiting the number of arrivals from each nationality arbitrarily to 10 per cent of the number born in such country already residing here. Such measure is most vicious. It would draw race lines and demarcations and create false and discriminatory standards of race values, permitting a man of a given nationality to enter, while excluding at the same time one equally good or better, of the same or another. It would fan race prejudice and discrimination, flying directly in the face of President Roosevelt's able exposition of our national policy in his message of 1906, where he said: "Whether they are Catholic or Protestant, Jew or Gentile; whether they come from England or Germany, Russia, Japan or Italy, matters nothing. All we have a right to question is a man's conduct." Moreover, on the basis of nationality, people subjected to persecution at home, but readily assimilated here, like the Finns, and the Jews, might be debarred by supposedly less desirable compatriots of other race stock from the same country. It would permit steamship runners and smugglers to stir up immigrants to come over prematurely for fear that they could not enter later on, and also inter-

fere with the present salutary process under which immigrants arrive, having little money, at the very season when they can best secure work.

The recommendation is in line with the dangerous method of investigation pursued by the Immigration Commission, of figuring everything in terms of race, tending to fan race prejudice and race distinctions. Pursuant to this, an attempted distinction is drawn between the so-called "old immigration", from Northern and Western Europe, which no longer comes over in force, and the so-called "new immigration" from Southern and Eastern Europe, which makes up the bulk of our present immigration. The assumption that the latter is not readily assimilated and Americanized is refuted by the actual facts. Similar objections were made to the Irish and Germans of the "old immigration", when they came over in force decades ago, but today the machinery established here for Americanization and assimilation is immeasurably more potent than what existed for the old. Special immigrant classes and classes in civics, newspapers and lectures, tenement house reform and rapid transit improvements, labor unions and social reform, and innumerable organizations for aiding and distributing the immigrant now exist, which were not dreamt of in the days of the "old immigration". Accordingly, the true solution of the immigration problem is to be found in developing the admirable work along these lines done by such societies as the Industrial Removal Office, the Galveston Bureau, the Hebrew Sheltering and Immigrant Aid Society, the Immigrants' Protective League of Chicago, the Educational Alliance, the Hull House Settlement and the Government Information Division and similar State immigration bureaus. President Wilson ably opposed such discriminatory legislation in his letter to Congressman Sabath, dated August 20th, 1912, in the course of which he said:

"Sound and honest men and women out of every one of the great European stocks, who come of their own volition, and make homes for themselves, are welcome amongst us; no one can justly criticise our laws if only those who are sound and honest are admitted. Debased men and women of an unserviceable kind may come out of any race or stock, but America has enriched her genius, has made it various and universal, as she has renewed herself, out of all the ancient peoples from Norway to Italy, and the rich lands of the Mediterranean who have the literature and history of the world".

Also in his letter to Dr. Cyrus Adler of October 26, 1912, President

Wilson said: "I think that this country can afford to use and ought to give opportunity to every man and woman of sound morals, sound mind and sound body who comes to spend his or her energies in our life, and I should certainly be inclined, so far as I am concerned, to scrutinize very jealously any restrictions that would limit that principle in practice".

II

Before this body, composed of leaders of influential congregations and moulders of public opinion, I cannot forego this opportunity to elaborate more fully on the strange failure to adequately exempt religious and political refugees from the literacy test in the Dillingham-Burnett Bill. It is due to the fact that already on June 25, 1906, by a strange blunder, the inadequate, clumsy, exception of the English Aliens Act of August 11, 1905, was blindly adopted literally in the House of Representatives, as an amendment to the bill then pending, to exempt religious and political refugees from a literacy test, in ignorance of the fact that it had been bitterly criticised in England as inadequate, had proven unsatisfactory there, and was designed to serve an entirely different purpose in the English bill, as an exception to their "likely to become a public charge clause", and not to any literacy test.

When our House of Representatives was considering a restrictive bill, including a literacy test, in June, 1906, soon after the horrors of Kishineff and Bialystock, Congressman Littauer offered an amendment to enable such unfortunate religious and political refugees to enter, despite likelihood to become a public charge, and he copied the British Act clause, which provided that in the case of "an immigrant who proves that he is seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds or for an offense of a political character, or persecution, involving danger of imprisonment or danger to life or limb on account of religious belief, leave to land shall not be refused on the ground merely of want of means or the probability of his becoming a charge on the rates". (Sibley and Elias; *The Aliens Act and the Right of Asylum*, p. 85).

Mr. Littauer, however, left out the word "solely" which was a most serious word of limitation in the British Act (Congressional Record, Vol. XL, pp. 9164-5), and urged the adoption of this clause. Congressman Goldfogle thereupon announced his intention to offer a similar amendment to the literacy test clause, when reached. Congressman Gardner of Massachusetts, the chief champion of the literacy test,

thereupon remarked that the amendment copied the British Act, except that the important word "solely" was omitted, and Mr. Littauer agreed to accept an amendment restoring it, which was not very important, as we will presently see, as to the "likely to become a public charge" clause, but was vital regarding the literacy test. Mr. Gardner very fairly criticised the inaptness of this Littauer amendment to carry out the intention of the mover of the amendment, but stated:

"If an exception is carefully drawn to prevent the educational test applying to these unfortunates, I shall not oppose it if it be carefully guarded and drawn, but that is very different from applying it to this bill at this stage, because it undoes existing legislation. It throws the door open to everyone who is coming in now and who is excluded as likely to become a public charge."

Despite the opposition of Mr. Gardner and others, the Littauer amendment to the "likelihood to become a public charge" clause was at once adopted by the House by a vote of 92 to 69 (Congressional Record, Id.; compare Immigration Com. Reports, Vol. 1, p. 10).

When the literacy test clause was reached, a few minutes later, Congressman Denby, who had been in the unsuccessful minority on the Littauer amendment, offered a similar amendment, with the words "seeking admission solely to avoid persecution * * * on account of religious belief" in it, as an exemption from the educational requirement, and said:

"I think no harm can be done by maintaining the noble practice that has prevailed so long in the United States of offering a welcome to those who flee from intolerance in other lands. The amendment is carefully guarded. It is also based upon the English Aliens Act, as was the amendment offered by the gentleman from New York * * * That Act is well and carefully drawn."

The amendment was promptly adopted without division, and without opportunity for mature consideration of its scope (Congressional Record, Vol. XL, pp. 9166-7). It should be noticed that the Littauer amendment involved, in effect, the serious question whether religious or political refugees who were in fact likely to become public charges on State and county, should be admitted by the Federal Government despite the fact that they had no relatives or friends here ready to look out for them.

When the literacy test clause was abandoned in conference for one substituting a provision for an Immigration Commission in the Act approved February 20, 1907, both this Littauer amendment and the

Denby amendment were dropped. It is substantially this narrow and limited phraseology that appears in the Smith, Dillingham-Burnett and Gardner Bills today, exempting from the literacy test aliens "seeking admission to the United States solely for the purpose of escaping from religious persecution," and which Mr. Louis Marshall on behalf of the American Jewish Committee, and Mr. Simon Wolf and myself, on behalf of the Board of Delegates, have criticised as almost wholly nugatory.

The House of Representatives adopted it in 1906, upon Mr. Denby's statement that this clause of the British Act "is well and carefully drawn." But Lord Chancellor Loreburn said in the House of Lords concerning it, on April 5, 1906, in answer to an inquiry previously put to him there concerning this very clause, which he had delayed answering until he had carefully studied the Act: "It is a very clumsy piece of legislation. * * * The Act is very much wanting in precision." (Parliamentary Debates, Fourth Series, Vol. CLV, pp. 669-71). Similar views had been repeatedly expressed concerning it by eminent statesmen, and the former Lord Chancellor Halsbury gave it even less effect (Id. Vol. CLIV, pp. 554-5), and it is notorious that its practical value has been almost nil.

The legislative history of this clause of the British Act and the arguments regarding it by the leading British statesmen and jurists of our day are, however, most valuable and instructive, and contain a world of meaning to us.

It should be remembered that the British bills under consideration never contained any proposition even to exclude illiterates, but merely criminal and insane persons and persons likely to become public charges, and the question was how far to admit persons in fact (under a reasonable construction of law) likely to become public charges because they were victims of religious or political persecution. Moreover, the Jewish question was particularly involved, because it was pointed out that nearly all immigrants entering England were Russian Jews, and in fact chiefly such as either were too poor to go to the United States or had previously been excluded from the United States.

The strong argument of the British Ministry was that the sacred right of asylum was not involved in such cases at all, because the Jewish community of England and others were ready to continue to take care of their unfortunates and keep them off the poor rates, so that they were not within the Act at all. This argument was expressed again and again by the Ministry, though many men of all parties urged

an extension of the clause, and successive enlarging amendments were accepted, accounting for the involved and clumsy form of the clause as finally adopted.

The then Prime Minister, Mr. Arthur Balfour, took an active part in the discussions, and in their course made the following remarks:

“Those who were kept out were but a small number and they were kept out solely because they were likely to become a burden upon the country if they were allowed in. Did the House really think that the destitute victims of religious persecution, especially Jews, would not find among their coreligionists sufficient assistance to enable them to belong to that large class of immigrants who would come in, instead of to the small class that might be kept out? Probably of all religious communities the Jewish community proved itself to be the most devoted, the most profusely liberal in providing for the destitute of its own body. (Parliamentary Debates, Fourth Series, Vol. CXLIX, p. 157). * * * The real difficulty about this question was, after all, not the question of principle, but the difficulty of draftsmanship. * * * Possibly the words of the Government were too stringent but he was certain the words of the right honorable gentlemen were far too lax.” (Id., pp. 177-180). Again (Id., p. 1283): “We have heard a great deal of the possibility of Jews and others—for a moment I can confine myself to the Jews—coming to this country in an absolutely destitute condition, and being rejected under this bill from our shores, although they were flying from religious or political persecution. Nobody desires that such a contingency should occur, and I cannot believe, and I do not believe, that while the number of such immigrants is at all upon the same plane as it is at present, there will ever be any difficulty in that regard. The great Jewish community without the smallest difficulty, can see to it that no man seeking the hospitality of this country should ever be rejected from these shores. That it could be done with regard to every Jewish immigrant is, I think, plain on the face of it, and will hardly be denied by anybody.”

On the other hand, after Major Evans Gordon, the chief restrictionist, had moved to limit the Government phraseology still more by inserting the words “actual and immediate cases of hardship personal to the individual who pleaded them” (Id., p. 955 et seq.), while recognizing that (Id., p. 958) “the word ‘solely’ might leave some room for discrimination, but who could decide on the man’s motive in such a

case, otherwise than upon the evidence which he himself chose to give with regard to it?"

Mr. Balfour intimated that (p. 965):

"He did not think that the words the honorable member proposed would make the duty of the Immigration Commissioners more clear than it was made by the words proposed by the Government. He did not think that his honorable friend had really sufficiently considered the value of the word 'solely' which was the beginning of the Government amendment," and he intimated that the word "solely" was used in the sense of "imminent" danger.

Early in the discussion Mr. Stuart Samuel of the Jewish Board of Guardians had stated (Id., p. 161) that:

"He could only say that his people, the Jewish community to which he belonged, were perfectly prepared to undertake the burden of supporting the Jewish aliens," and Mr. Cohen (Id., p. 161-2) and others had spoken to the same effect.

On the other hand, Sir Robert Finlay, the Attorney General, had previously stretched the Government language beyond reason in arguing that an extension of the Government's language was unnecessary to protect all fugitives (Id., p. 974), saying:

"Whenever a government interferes with a man's liberty or his property and with his person on account of political opinions, that was a case of punishment on political grounds. Punishment was not confined to punishment following legal process; it would also refer to arbitrary punishment without any legal process whatever."

Mr. Akers-Douglas, the Home Secretary, said (Id., p. 1258):

"A desire had been expressed on both sides of the House that no political or religious refugees should be turned back from these shores for want of means. It had never been the desire of the Government to exclude such refugees."

On the other hand, many leaders of public opinion had condemned the Government language at different stages as entirely too limited, even as an exception to the "likelihood to become a public charge" clause under consideration.

Sir Charles Dilke was one of the leaders in this movement and offered an amendment broadly exempting any person "persecuted by reason of the treatment of the religious body to which he belongs" (Id., Vol. CXLV, p. 696; Vol. CXLIX, p. 149 et seq.) and said:

"The overwhelming bulk of the movement of the Russian Jewish emigration had been to the United States, but his impression

was that both to this country and to the United States the acquisition of the population had been a benefit and not a drawback. He was of opinion, that the religious persecutions which had disgraced the world at various times had in the past brought incidentally benefit to this country through the asylum we had extended to the victims of such persecutions, and he personally thought the present persecution of the Jewish population of Russia did this country good rather than harm."

Mr. Bryce said (Id., pp. 903-6) :

"The right honorable gentleman had never met their argument that they could not exclude aliens without doing wrong to a large number of innocent people. * * * What had been shown was that the Jews provided for the poor of their own community, and that the bringing in of a great deal of Jewish labor enabled a number of trades to be established which could not flourish without cheap labor in their initial stages."

Mr. Asquith, now Prime Minister of England, made a particularly strong argument. He said (Vol. CXLV, p. 743 et seq.) :

"I gather that the Government itself recognizes the importance of this, but the words they have chosen seem to me totally inadequate, and would really mean the exclusion of a large number of refugees. Take those who have arrived during the last twelve months from Russia. I do not suppose that one in ten could show that they were seeking admission solely for the purpose of avoiding persecution. We want words that are wider and more elastic, if we are to carry out the common object of us all—which is that these unfortunate persons, victims of social and political prejudices, shall in the future as in the past receive free admission to our shores." Again (Vol. CXLIX, pp. 947-8) : "If the choice were between words which seemed too wide and words which were certainly too narrow, he thought the House ought certainly to err on the side of generosity."

Mr. Trevelyan argued in similar fashion (Vol. CXLV, p. 702) ; Mr. Burns said that "as a labor leader he protested against this denial of the right of asylum" (Vol. CXLVIII, p. 868).

Lord Hugh Cecil, in a similar strain, said (Vol. CXLIX, pp. 171-4) :

"When we adopted the principle of religious liberty, we did so for the whole human race, and the distinction that some people were disposed to draw—but not the Government—between our own people and foreigners, was not a distinction known to Eng-

lish history, nor could it be defended on grounds of Christianity or reason * * * Only a small number of persons would come within the exemption, for in the large number of cases friends would provide the refugee with sufficient money to take him outside the scope of the bill altogether. * * * If any community had the choice between bearing on the rates the burden of supporting the people and sending them back to such persecution as the Jews had suffered in Russia, the community would not hesitate a moment in opening their door wide to the refugees. He would undertake to go to Stepney any day and convince the working men that that was their duty and he was sure that they would embrace it with positive enthusiasm."

Mr. Runciman referred to his personal knowledge of men who had come from Southern Russia as victims of religious persecutions, Christians as well as Jews, whom such clause of the bill would exclude (Id., pp. 174-5) and Mr. J. F. Hope, to Christian Polish refugees, similarly circumstanced and Turkish subjects soon likely to come, who ought to be exempted (Id., p. 175).

Sir Rufus Isaacs, now Lord Chief Justice of England, argued (Vol. CXLVIII, p. 1189):

"If the proposed concession meant that the Home Secretary desired to exclude from the operation of the clause all who were forced to flee from their country because of persecution on religious grounds, the words were inept for that purpose. If, on the other hand, the right honorable gentlemen did not mean to exclude such persons from the operation of the clause, the concession was illusory and not intended to have the effect desired by many members on either side of the House."

Mr. Cripps well said (Vol. CXLIX, p. 152 et seq.):

"That (the admission of a few undesirables) would be a very small evil compared to our shutting the door to those who fled to this country as an asylum from persecution. Let us not at this period of our civilization, a civilization of which we boast, in a bill of this kind, give the go-by to the best traditions of our past history, and refuse an asylum to a man who for the sake of his faith came to us, a person who had been persecuted for his belief. * * * It was a matter upon which they all felt deeply, and he would only appeal to the committee not to let this country go back on its great tradition as a free country, the tradition that all who sought

an asylum on the ground of their religious belief found one in this country”.

Mr. Emmott said (Vol. CLXIX, pp. 163-166) :

“He was not going to say anything about the right of asylum. He thought historically undoubtedly we could not talk very much about the right of asylum, but we could talk about the ‘practice of asylum’, and that was the real point that they wanted as far as possible to keep up. Because of any evil that we saw now in this country resulting from alien immigration, we did not want to think that Jews in destitute parts of Europe in fear of their lives might be prevented from coming here because they feared that on arrival they would be turned back to face again the persecution which they were seeking to avoid. That was the real question; it was not vague altruism”.

In the House of Lords, similar views were expressed by Lord Belper, who was in charge of the bill (Vol. CL, p. 754), Earl Spencer (Id., p. 756), the Marquess of Lansdowne (Id., p. 764), Lord Coleridge (Id., p. 772), and Lord James of Hereford (Vol. CLI, p. 18), who had been chairman of the English Aliens Commission.

To sum up, then, it is clear that the opposition in the English Parliament, regarded this language (erroneously carried by Mr. Denby and his successors into our American bills, on the theory that it was “well and carefully drawn”) as entirely inadequate, and it was defended by Prime Minister Balfour and his associates as an exception to a “likely to become a public charge” clause *simply because* it was believed that the assistance which political and religious refugees could count on after arrival, from relatives and friends (including that of the Jewish Board of Guardians) was an important factor, making it necessary to exempt only persons actually likely to become public charges, coming *solely* to escape persecution and in effect in immediate and imminent personal danger. Obviously, such limited phraseology—which has in fact proved quite inadequate as administered by the British immigration officers—will not afford sufficient relief as an exception to a literary test. The aid and assistance of relatives and friends here, obviously, will not turn an illiterate fugitive from persecution into a literate and admissible one. Language such as was suggested by Sir Chas. Dilke in England is requisite, “persons coming to escape persecution by reason of the treatment of the religious body to which he belongs”, or, as suggested to Congress as a substitute for the exception in the Dillingham-Burnett Bill:

“Provided, however, that the educational test shall not be applicable to any person who shall emigrate from any country wherein persecution is directed against the religious denomination to which he belongs by means of laws, regulations, customs, orders or otherwise, nor to any person seeking to avoid persecution because of political beliefs or activities”.

It is also important to observe what stress was laid by the distinguished British publicists on the right of the alien to have proffers of assistance from relatives and friends, including private charitable organizations taken into account, as negating likelihood to become a public charge. The same view has been taken in this country by leading authorities (opinion of Judge Brown in *Re Day*, 27 F. R. 678—quoted in Vol. SLI, Reports of Immigration Commission, p. 168; compare pp. 146-8 and the able opinion of Charles Earl, Solicitor of the Department of Commerce and Labor, dated July 28, 1909, In *Re the meaning of the term public charge* as used in Section 20 of the Immigration Act). Commissioner Williams' circular letter of July 28, 1909, followed by Commissioner General of Immigration Keefe, wrought incalculable mischief to the immigrants, particularly by reason of its erroneous doctrine that aid to “immigrants after arrival will not be considered in determining whether or not they are qualified to land * * * except where such gifts are to those legally entitled to support, such as wives, minor children”, etc. * * * it being wholly inconsistent with fundamental principles of law and right, especially as the Government commonly refuses to make the obligation a legally enforceable one by taking a bond (compare Vol. XLI of Immigration Reports, pp. 145-6, 149-50, 161-2, 166-72).

On the other hand, while insisting that immigrants commanding such assistance from friends and subsisting charitable organizations, are not “likely to become public charges”, our American Jewish organizations in 1910 repudiated any desire to have an exception made in favor of religious refugees from the *likelihood to become a public charge* clause, in that even in their “Recommendations to the Immigration Commission” (Vol. XLI, p. 152), they gave assurances that the Jews of America would continue to look after their unfortunate co-religionists.

In the brilliant debates in the British Parliament referred to, it will have been noticed that numerous references were made to the importance of preserving the sacred “right of asylum”. The duty to permit free ingress and egress, and protection while here, to the alien merchant was expressly recognized already in 1215 in Magna Charta.

Moreover, the legal historian can trace an interesting connection between this right of the resident alien and the immigrant, and the "right of asylum or sanctuary", which at one time existed as a valuable legal institution in England and on the Continent, in order to relieve certain classes of malefactors from further penalties, who sought refuge in sanctuary and were ready to leave the kingdom, on the basis of the old Mosaic institution. While this latter right was formally abolished, as far as concerns the English malefactor, in the reign of James I, both England and the American colonies continued to profit by the arrival of persons in search of such asylum, from abroad; and in those days (and unfortunately still in Eastern Europe) the religious dissenter was treated as a malefactor, commonly best off if he seeks asylum abroad.

Whilst in this country we have been far more familiar with the practice of asylum than with the name, Jefferson, the lawyer, had it in mind when he penned his famous line: "Shall oppressed humanity find no asylum on this globe", and it finds direct expression in exceptions to our extradition laws and in the expressed exception of political offenders from certain disabilities under our immigration laws. In general, however, its chief application in our land has been to emphasize the limitations upon executive action against aliens, and to emphasize the principle thus particularly applicable to our immigration laws, that these laws shall be strictly construed in favor of the immigrant, because in derogation of individual liberty.

Instances innumerable are to be found where our country applied the right for the benefit of victims of political and religious persecution, whether in our land or abroad. In its national platform in 1884, and often previously, the Democratic party reaffirmed "the liberal principles embodied by Jefferson in the Declaration of Independence and sanctioned in the Constitution, which makes ours a land of liberty and the asylum of the oppressed of every nation", which "have ever been cardinal principles of the Democratic faith". So also has the Republican party, beginning with its platform of 1864, as did also the Free Soil Party platform of 1852.

An interesting example is furnished by the important letter written by an eminent Republican Secretary of the Treasury, Charles Foster, on August 1, 1891, in favor of Russian Jewish refugees. In that instance considerable trouble arose because some European Jewish charitable organizations had lent pecuniary assistance to Russian Jewish refugees to come to the United States, in ignorance of the fact that the U. S. Immigration Law of 1891, just enacted, provided that persons

thus aided must affirmatively prove that they are not of the prohibited classes, such as paupers or persons likely to become public charges. Mr. Simon Wolf, on behalf of the Board of Delegates, urged that these people are not inadmissible "when hands of help and welcome are outstretched to elevate them to the exalted position of American citizenship without demanding any contributions from national or State taxes", and offered to give bonds that they would not become public charges. It was admitted that, under the peculiar facts involved, they did come within the class required affirmatively to show that they are not paupers or likely to become public charges, but it was urged that they had met this burden.

Attention was further directed to the fact that American Jewish societies in no way encouraged or assisted European Jewish immigrants to come over, but merely aided their co-religionists on arrival, and that the European organizations had been warned that no aid must be thereafter rendered by them to induce Jewish refugees to come to America or pay their passage. Secretary Foster well said:

"Whilst the immigration laws of the United States must and will be enforced, I agree that those laws were never enacted in derogation of the plainest requirements of humanity, and no worthy immigrant who, in all other respects meets the demand of our statutes, should be excluded from the country because, through the action of others, he is for the time being homeless and destitute." (New York Sun, August 2, 1891).

It was not till 1907 that the law made immigrants inadmissible whose passage had been paid by corporations, associations, municipalities or foreign States, and the earlier acts merely shifted the burden of proving admissibility upon the alien. It is interesting in this connection to notice that the Immigration Commission even resorted to espionage, to ascertain whether Jewish societies abroad in Russia and Roumania violated this Act of 1907, but each time the proof was to the contrary ("Immigration Conditions in Europe", pp. 65-7). Baron de Hirsch, in 1894, on behalf of his charities, gave assurances that Jewish immigration to the United States would not be induced or aided pecuniarily, and the Industrial Commission then already so found (Vol. XV, Report of Industrial Commission, pp. 13-14, XCIV).

Of course, our laws do forbid the alien who is physically, mentally or morally diseased, or likely to become a pauper, from entering, but with this reasonable affirmative statutory provision allowed for, we may still say, with Lord Chief Justice Campbell, who charged the jury in

1858 in the famous case of *Reg. vs. Bernard*, with respect to the right of asylum, that

“It has been the glory of this country to afford (it to) the persecuted foreigner. That is a glory which I hope ever will belong to this country. That asylum, however, remember, amounts to this, that foreigners are at liberty to come to this country and to leave it at their own will and pleasure, and that they cannot be disturbed by the Government of this country as long as they obey our laws; and they are under the same laws as native-born subjects, and if they violated those laws they are liable to be prosecuted and punished in the same manner as native-born subjects”.

THE ALIEN AND RIGHT OF ASYLUM*

We have had fuller discussion of the "right of asylum" during the past decade in the United States than at any time during the preceding century of our history. Congress, during the past six years, has repeatedly devoted entire days to a consideration of this so-called "right," and it was emphasized in the platform of the Democratic, the Republican and the Progressive parties last year. In vetoing the prior Immigration bill, President Wilson, on January 28th, 1915, criticised not merely the literacy test, but also the bill's curtailment of right of asylum, well saying that:

"this bill embodies a radical departure from the traditional and long-established policy of this country, a policy in which our people have conceived the very character of their Government to be expressed, the very mission and spirit of the Nation in respect of its relations to the peoples of the world outside their borders. It seeks to all but close entirely the gates of asylum which have always been open to those who could find nowhere else the right and opportunity of constitutional agitation for what they conceived to be the natural and inalienable rights of men. . . . Restrictions like these, adopted earlier in our history as a Nation, would very materially have altered the course and cooled the humane ardors of our politics. The right of political asylum has brought to this country many a man of noble character and elevated purpose who was marked as an outlaw in his own less fortunate land, and who has yet become an ornament to our citizenship and to our public councils."

In the Immigration bill that just became a law over the President's veto of January 29th, 1917, enacting a literacy test, there is a much broader and more effective exemption of religious refugees from that test than the earlier bills contained, which Presidents Taft and Wilson had previously vetoed, the exemption now reading:

"all aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such perse-

* *American Law Review*, Vol. 51, No. 3, May-June, 1917, under title "The Right of Asylum, With Particular Reference to the Alien."

cution be evidenced by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith."

Some years previously, in December, 1910, in its report to Congress, the national "Immigration Commission," well recognized an established American national policy, in laying down the principle that "the American people, as in the past, welcome the oppressed of other lands," and in Jenks and Lauck's "The Immigration Problem" (pp. 334, 335), written by two gentlemen actively identified with the Commission, it is well said: "In the judgment of the Commission, as well as of most other enlightened citizens, the United States should remain in the future, as in the past, a haven of refuge for the oppressed, whether such oppression be political or religious. Any restrictive measure should contain a provision making an exception of such cases." The British Parliament in 1904-1905, in connection with the British Alien Act debate, in which the greatest British statesmen of the day participated, listened to many able speeches to be found published in the "Parliamentary Debates" which deservedly rank among our political classics. As far as America is concerned, the most famous exposition of the principle is to be found in Jefferson's immortal lines, in his Presidential Message of 1801, which sounded the death-knell of the Alien and Sedition Laws, in his famous rhetorical questions: "Shall we refuse the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our forefathers arriving in this land? Shall oppressed humanity find no asylum on this globe?"; following the Democratic platform of 1800, containing a similar plank, and Republicans and Democrats have repeatedly since then reaffirmed their allegiance to this hallowed principle, for example, in the Democratic platform of 1884, upon which Grover Cleveland was elected, where we read of "the liberal principles embodied by Jefferson in the Declaration of Independence and sanctioned in the Constitution, which makes ours a land of liberty and the asylum of the oppressed of every nation," which "have ever been cardinal principles of the Democratic faith." Strangely enough, however, the "right of asylum" in this broad sense, has scarcely ever received scientific treatment in America, either at the hand of the jurist or the publicist, and our law text-books, dictionaries and encyclopedias, almost ignore the phrase, and our cyclopedias of political science and the like contain only meager articles. In this country, for many decades, treatment of the "right of asylum" has been almost entirely limited to our extradition laws and to the branches

of international law dealing with asylum in diplomatic buildings, and aboard ship. In this field, Prof. John Bassett Moore's scholarly and comprehensive writings are our most authoritative treatises. The reason for our American neglect of other branches of the field is doubtless to be found in the fact that, in a country like ours, a "government of laws and not of men," restraint upon entry and other voluntary motion of citizen or alien, except as far as affirmatively authorized by law, is forbidden by the Constitution, and "right of asylum" is largely embraced by the fundamental general canon of construction that even all legislation in derogation of individual liberty, and all the more so, executive action, must be strictly construed, a principle peculiarly applicable to our immigration laws¹.

When, however, within the past few decades, our courts read into the Constitution, legislative power to exclude and deport aliens, and by extra-constitutional methods, on the theory that the sovereign power here must possess powers vested in sovereign powers abroad, though not expressed in our Constitution, this theory of "right of asylum" acquired new importance and significance, especially as this development naturally has carried with it, incidental assumptions by our administrative authorities, also, of indefinite right to exclude particular persons, whose coming may be distasteful to them, or may be apt to encounter disfavor among foreign powers, which fortunately the courts have condemned and overruled. It is this general subject of "Right of Asylum for Aliens," which it is proposed to consider herein, largely along historical lines, a "right" which was ably expounded by Chief Justice Campbell² in 1858, in one of the few cases that have considered it, the famous case of *Reg. v. Bernard*, 8 State Trials, N. S., 887, 1055, 1061, as follows:

"It has been the glory of this country to afford (it) to the persecuted foreigner. That is a glory which I hope ever will belong to this country. That asylum, however, remember, amounts to this, that foreigners are at liberty to come to this country and to leave it at their own will and pleasure, and that they cannot be disturbed by the Government of this country as long as they obey our laws; and they are under the same laws as native-born subjects,

¹ Lieber's *Hermeutics* (3rd ed.) pp. 128, 129, 137; Vol. 41 *Immigration Commission Reports*, 145, 171, *Moffatt v. U. S.*, 128 F. R. 375, 378 C. C. A.; *Lau Ow Bew v. U. S.*, 144 U. S. 47, 59; *Tsoi Sim v. U. S.*, 116 F. R. 920 C. C. A.; *Am. & Eng. Ency. of Law* (2nd ed.), Vol. 26, pp. 646-648, 659, 661, 662; compare *Gegiow v. Uhl*, 239 U. S. 3.

² See Sibley & Elias "The Aliens' Act and the Right of Asylum," pp. 15, 133-135.

and if they violate those laws they are liable to be prosecuted and punished in the same manner as native-born subjects."

Jefferson, the Virginia lawyer and close student of our common law, undoubtedly used the term "right of asylum," in the broad sense in which it had been developed in England and on the continent from pre-historic times on, and in which the civil law had adopted it from the Mosaic law and paganism, and thereafter modified by statutes and decrees, to include refuge for the alien, as well as for the person from home or abroad, guilty of, or suspected of, crime.

In its origin, the doctrine of asylum doubtless concerned itself primarily with the alleged malefactor, though particularly in early historic times, the alien was commonly put in this category, because his varying political or religious professions of faith or allegiance were embraced by the prohibitions of the law. Undoubtedly, the doctrine of right of asylum sprang up to ameliorate the rigors of public law, and vendetta, or private vengeance, thus exacting from the seeker of vengeance, public or private, time to let his passion calm down, and in days when primitive justice was commonly administered, with little or no regard for the rights of the accused, and punishment was imposed summarily and generally in the form of a death sentence, "right of asylum" was an important factor in working for justice and necessary mercy, in the execution of the criminal law. Various factors are present, in the establishment of places which enjoyed "right of asylum" or "sanctuary," and in their origin, the motive was commonly a religious one, and the places to which right of asylum attached were generally religious shrines or the like. Naturally, the sacredness of a religious shrine or place was regarded as desecrated or polluted, if bloodshed or violence were committed there, so such misdeeds were prohibited and the refugee who reached its protecting site succeeded, for a time at least, and on varying conditions, in staying the avenging hand stretched out against him. Moreover, the power of the deity might well be indicated to his devotees or others, by his ability to afford sanctuary and refuge to the suppliant who invoked his aid.

Regard for the possibility of summary vengeance being taken upon the innocent under suspicion, probably also was a factor in thus delaying ordinary prosecution, followed often by ecclesiastical confession and ecclesiastical punishment. Doubtless, also, the deity and his priests or sacred sites were to be spared, in the primitive mind, from the dangers and consequences of the curse of the dying refugee. Montesquieu (*Esprit des lois* XXX 3) suggested that the removal of the offender

to a distant point was designed to relieve the relatives of the slain victim from the painful spectacle of beholding continually one who had been withdrawn from their unsatisfied lust for vengeance. Primitive man often made the right of asylum absolute and all comprehensive, though the development of public justice and attending agencies and forums, and the necessity of preventing the establishment of nurseries of crime, gradually limited the number of places enjoying this privilege, and excepted certain grave crimes, more or less arbitrarily, including also at times particularly the religious and political malefactor.

We are, of course, most familiar with "right of asylum," as recorded in the Bible and in the Greek and Latin classics, and much less so with its practices among savage men, from earliest times to our own day, and are also strangely unfamiliar with its interesting history in the Middle Ages, and in modern times. Particularly interesting and suggestive is the article on "Asylum" recently published in Hastings' "Encyclopedia of Religion and Ethics," from the pen of Edward Westermarck, containing an enormous number of citations, and throwing new light, particularly, upon the institution among primitive men, among practically all of whom it is encountered in varying forms, as also the valuable series of articles by Dr. Ludwig Fuld on *Das Asylrecht im Alterthum und Mittelalter*³. The civilized world of today has, of course, been deeply influenced by the attitude of the Bible towards this institution, and interesting discussions of the Hebrew conception of "right of asylum," particularly in an exposition of the six "Cities of Refuge" established by the Mosaic book, may be found in the "Jewish Encyclopedia" article "Asylum" by Professors Toy and Ginzberg, and in Fuld's comparative study, and in the numerous more specialized works there cited. The attitude of the Mosaic Code is well illustrated in the book of Numbers XXXV, 11, *et seq.*:

"Ye shall appoint you cities to be cities of refuge for you, that the manslayer which killeth any person unwittingly may flee thither. And the cities shall be unto you for refuge from the avenger; that the manslayer die not, until he stand before the congregation for judgment. . . . For the children of Israel and for the stranger and for the sojourner among them shall these six cities be for refuge."

It is remarkable that already at this early date Hebrew law did not fully shield the fugitive at such place of sanctuary, but merely pro-

³ In Vol. 7 of the "Zeitschrift für Vergleichende Rechtswissenschaft," pp. 81-157 and 285-296.

tected him until the "judgment of the congregation took place," when passion had calmed down. This distinguished Hebraic "asylum" from other primitive peoples', as does also the fact that only those who offended "unwittingly" were permanently protected.

My attention has also been directed to the remarkable fact that the Hebrew word for stranger "*Ger*" etymologically meant "protégé," so that one fleeing to the sanctuary became a protégé or client of Israel's God. Sanctuaries, as well as the cities of refuge, enjoyed this right of asylum in Jewish law, and political offenses were specifically included, and, as seen, from the passage quoted, and other similar ones, strangers were expressly embraced by them. (Compare Amram's "Leading Cases in the Bible," especially Joab's case, pp. 145-156.) It is obvious that these Biblical precepts must also have profoundly influenced law and custom in distant districts and times, where the Mosaic Code was even enacted into law of the land, as in early England and some of Britain's American colonies, particularly among the Puritans, at home and in the New World, who were so profoundly attached to the Mosaic legislation.

Attention has been called to the fact that Greece, which early developed right of asylum, even established at the temple of Theseus in Athens, such place of refuge for maltreated slaves. Greece and Rome originally afforded asylum at sacred shrines to all malefactors, guilty or innocent, regardless of the gravity of the offense, unlike the Hebraic institution. Zeus in particular stood for hospitable protection, and the chief shrines of all the deities became asylums for fugitives in Greece and Rome, as well as in Egypt, and afterwards in Mohammedan lands.⁴ The Greek attitude towards right of asylum is well expressed by Aeschylus in his "Eumenides,"⁵ where he puts the following words into the mouth of Apollo, when he declares his intention of assisting his suppliant, Orestes: "Terrible, both among men and gods, is the wrath of a refugee, when one abandons him with intent." Greek history and mythology are full of striking examples of the recognition, despite grave difficulties, of the right of asylum, even in favor of political offenders; and the modification, interesting us here particularly, soon developed, of having the suppliant seek sanctuary as an alien in some other state, and having his right recognized, even where the natural consequence became war between the two states involved. Attention has also been called to the fact that in Greek and Hebrew states, not

⁴ See particularly Fuld, at p. 119, et seq.

⁵ 232 et seq.

merely the right of asylum had religious sanction, but the duty of prosecuting the wrongdoer, was also divinely ordained—at first by private vengeance, before public justice developed—so that religion afforded a corrective, through such exercise of mercy, and demand for deliberation and investigation, for the rigors of the law, which it itself had so largely developed.

Rome's attitude towards right of asylum was similar, and tradition traces the very foundation of the city to such gathering together of fugitives. Moreover, the sanctification of the household gods in each home, in early Roman history, and similarly among the Germanic tribes, tended to create a right of asylum in each household, not only for the householder, but for the fugitive whom he chose to receive; and it is not unlikely that this spirit survives in some degree in our own day, in the limited immunity still enjoyed by the home against the execution of certain judicial process: "My house is my castle." There were other extensions of the right, which we cannot consider here. Naturally, however, Rome as the mother of law and order, which developed public justice and judicial machinery so greatly, had to curtail such limitations upon the administration of justice, in the interests of civilization and law before long. When Christianity became the state church for the Roman empire, the only substantial difference was that Christian sanctuaries, instead of heathen ones, enjoyed the right of asylum, and the early Teutons had independently developed the right of asylum, and as we will presently see, the Church remained, even by law, until very modern times, one of the chief, if not the principal, defenders of the universal right of asylum, as against local criminal laws and other local legislative and executive acts. Thus the Council of Toledo in 681, following Constantine the Great's course, decreed that any one should be excommunicated, who attempted to apprehend a criminal within 30 feet of any church, besides being visited with municipal law penalties, and Charlemagne, some years later, enacted a similar law in favor of the right of asylum of churches with secular penalties; and violation of sanctuary became one of the most heinous crimes on the books. The enormous influence of the universal Church, until the Reformation, in upholding and maintaining right of asylum and making the same effective, not merely against local criminal jurisdiction, but against private vengeance, and in supplementing State recognition of the right in foreign lands for the alien, has been commonly overlooked, even by writers who have described at length, the institution in their own land, to say nothing of the value of com-

parative studies of the institution in different lands; and that is particularly true of authors who have written in the English language or have treated the subject of the English institution, which, as we will presently see, expressly combined with "Right of Asylum" the further custom of "Abjuration of the Realm," necessarily involving the exiling of the suppliant to foreign parts. The fact that the Church continued to grant asylum in many cases not recognized by local law, added to her influence. Nor has the service of the Church, in developing the principle of right of asylum for fugitive slaves, commonly aliens, been adequately recognized, for it was a factor, whose importance cannot be easily exaggerated, in the abolition of slavery in Europe, due largely to the attitude of the Church in emphasizing the brotherhood of man. In fact, this can be more clearly indicated by referring to the attitude of the Church towards the fugitive seeking asylum, which differed in point of view quite radically, from earlier precedents in one respect, at least. The Church concerned itself particularly with the ultimate salvation or redemption of the fugitive, and hence it commonly attempted to judge him by its own substitute tests and standards, demanded confession, and administered its own substitute punishments and penances, and granted or withheld asylum in its holy places according to its own rules and principles. Therefore, as we have seen, it granted asylum in a far larger number of cases, especially in early days, than did the local law, which seldom knew of any punishment except death, and as the fugitive slave was not guilty *per se* of wrongdoing, its course in permanently sheltering him, tended to undermine the institution of slavery in Europe before municipal law had abolished it. When, or if, it or the other asylums delivered over the fugitive to the law of the land—commonly after the intense resentment and passion for vengeance immediately following the commission of the supposed offense had abated, or opportunities to make adequate reparation had been afforded—it often exacted exemption from capital punishment and from physical mutilation as a condition.

On the other hand, the Church was quite within its rights in denying in fact asylum within its walls to those who were incurably unregenerate from its standpoint, such as those who had been excommunicated, or who had been themselves guilty of violation of sanctuary, or had committed grave crimes or sacrilege within a church, and even those who were heretics or dissenters. This latter group interests us particularly here, the victims of religious prosecution or persecution, and we find that in Theodosius' laws already, for example, Jewish debtors and

fugitives whose apprehension on the score of alleged crime was sought, and other heretics, were denied asylum, if their innocence had not been previously established, and Gregory XIV also excluded heretics and persons guilty of various crimes committed in churches. Other places of asylum had to be found for the religious refugee, accordingly, and we will see that they were in fact provided, especially with the development of religious dissent and differences. Duellists, also, were denied right of asylum by the Church long before the civil law sought to punish them. The political offender, too, gave rise to much trouble in this field for the Church, for naturally the sovereign seeking his apprehension was apt to be personally concerned with his punishment, and not merely as an abstract "fountain-head of justice," and civil laws attempted more and more, to exempt political refugees from the right of asylum, especially as ecclesiastical immunity might afford him shelter in the civil sovereign's immediate vicinity with impunity. Under pressure, from time to time, political offenders were excluded by the Church from right of asylum, but at an early date, the status of the alien in a foreign land, even in the absence of treaty authorization, was differentiated from that of a political offender, and in fact, special places of asylum existed for aliens, and some in which fugitives were received, whether alien or not, while others remained exclusively for the native. Pope Alexander III, for example, established "truce of God" for the protection, not merely of monks, ecclesiastics and women, but also for strangers, merchants, peasants and even animals, and there were numerous similar Papal bulls.⁶ Of course, commercial and other advantages were also important motives in according rights to aliens. The whole subject of the development of the right of aliens is an interesting and important one, which has been greatly neglected by the historian; interesting light on it is thrown by such general historical works, dealing particularly with early times, as A. C. Bernheim's "History of the Law of Aliens from the Standpoint of Comparative Jurisprudence," Rudolf von Ihering's interesting study "Die Gastfreundschaft im Alterthum,"⁷ and Sibley and Elias' "The Aliens Act and the Right of Asylum." The need of providing protective law or custom at an early

⁶ See especially C. M. Tobar y Borgovo's "L'asile Interne Devant le Droit International," 1911, p. 94, etc.; Catholic Ency., Vol. 7, "Privileges, Ecclesiastical," and works there cited.

⁷ Rudolf von Ihering makes the interesting suggestion that the Phoenicians first developed right of asylum for aliens, in view of their far-reaching commercial interests, and that the Jews derived this institution from them, though they modified it, and that Greece also borrowed it from the Phoenicians. See the "Deutsche Rundschau," 1887, Vol. 51, pp. 357-397.

day for the alien, both in classic and early Teutonic history, may be well illustrated by two brief citations from Mr. Bernheim's useful, but little known, work (A Columbia Ph. D. thesis, pp. 15-20, 21) : "Early Roman law consecrated the right to enslave an alien, a member of a people with whom Rome was at peace, and to take possession of all their goods as if they were without an owner." And among the early Germans "it is said that the present meaning of *elend* (miserable) in German is derived from the condition of the *ellento*, the foreigners." But this branch of the subject can be more conveniently considered in another connection, and it was mentioned here merely to emphasize the comprehensiveness of this right, before going back to note statutory limitations placed upon it and its historical development.

It should also be noticed that, possibly in analogy to the Biblical "Cities of Refuge," right of asylum developed from early times in connection with other places than religious sanctuaries. Royal palaces soon become such "asylums," perhaps because the dwelling place of the temporal sovereign was regarded as demanding such immunity, no less than religious sanctuaries, and perhaps because it was regarded as unseemly to permit bloodshed or violence there, and because the king's dignity, as dispenser of mercy, to mitigate the sternness of rigid justice, seemed to require this. Before long, similar asylum was claimed from time to time by other lords and even petty nobles, and was granted by royal charter to particular persons and places, including universities, and the right also passed to the residences of diplomatic representatives of foreign sovereigns, especially as international law demanded the recognition of their extra-territoriality and immunity from the operation of the ordinary criminal laws and process of the state to which they were delegated, and asylum on board foreign vessels of war became another instance of recognition of right of asylum. Today, the most generally recognized instances of right of asylum are, in fact, the right enjoyed by foreign embassies (and in some instances, consulates) and foreign vessels of war, which subject has been widely treated in specialized work, particularly by Prof. John Bassett Moore,⁸ and of foreign countries generally, as a limitation upon the right of extradition of persons charged with crime in demanding states. It was natural that, especially in the case of offenders against the political and religious policies of a state, refuge should be sought in foreign lands where such laws and their penalties were not binding, and particularly as extradi-

⁸ Political Science Quarterly, Vol. 7, pp. 197 et seq., 397 et seq., and International Law Digest, Vol. 2, pp. 755-883.

tion treaties, commonly in terms, came to exempt political and religious refugees, and hence this became the most common example, in fact, of "right of asylum," and Prof. Moore treats a wider signification as "to a great extent metaphorical" in our American jurisprudence today. As we will see presently, England's unprecedented and unique development and treatment of "right of asylum" in general, made such "Right of Asylum for the Alien" of particular importance in her history and in that of the colonies she founded. Moreover, as practically the entire continent of Europe placed restrictions or prohibitions upon the emigration of their subjects to foreign lands until about a century ago with specific exceptions, such "right of asylum" was much more than "metaphorical" till recent days, and in fact England developed the policy first of encouraging such "right of asylum for the alien," bound for her own colonies, changing and liberalizing even her own emigration laws to that end. With this outline of the inclusiveness of right of asylum, we can now most conveniently go back to consider the limitations put upon the right by the early civil law, and their transplantation to England, and the history of the right of asylum in England and her American colonies.

By the Theodosian Code, in the fourth century, public debtors, embezzlers or fraudulent withholders of state funds, were denied right of asylum, and the denial to heretics has already been noted. The laws of Justinian, early in the sixth century, excluded from sanctuary, murderers, adulterers and those guilty of rape. The canon law of Gratian and the papal decretals excluded only robbers, highwaymen, heretics and persons who had committed crimes in churches. We thus see a tendency to curtail asylum, by excepting particularly certain grave offenses, as law and order developed and the necessity of preventing impunity for crime became marked. In England, also, right of asylum seems to have existed, from the earliest known historical period, and contributions towards its establishment seem to have come from Celtic, Teutonic, Roman and religious sources.

Probably the finest panegyric on the influence of right of asylum in English history is the following passage from Sir Thomas Erskine May's excellent "Constitutional History of England."⁹

"Nothing has served so much to raise, in other states, the estimation of British liberty, as the protection which our laws afford to foreigners. Our earliest history, indeed, discloses many popular jealousies of strangers settling in this country. But to foreign

⁹ 1880 Ed., Vol. 2, p. 283, et seq.

merchants, special consideration was shown by Magna Charta; and whatever the policy of the state, or the feelings of the people, at later periods, aliens have generally enjoyed the same personal liberty as British subjects—and complete protection from the jealousies and vengeance of foreign powers. It has been a proud distinction for England to afford an inviolable asylum to men of every rank and condition, seeking refuge on her shores from persecution and danger in their own lands. England was a sanctuary to the Flemish refugees driven forth by the cruelties of Alva; to the Protestant refugees who fled from the persecution of Louis XIV, and to the Catholic nobles and priests who sought refuge from the bloody guillotine of revolutionary France. All exiles from their own country—whether they fled from despotism or democracy—whether they were kings discrowned, or humble citizens in danger—have looked to England as their home. Such refugees were safe from the dangers which they had escaped. No solicitation or menace from their own government could disturb their right of asylum, and they were equally free from molestation by the municipal laws of England. The Crown indeed had claimed the right of ordering aliens to withdraw from the realm; but this prerogative had not been exercised since the reign of Elizabeth (viz. in 1571, 1574 and 1575). From that period—through civil wars and revolutions, a disputed succession, and treasonable plots against the state—no foreigners had been disturbed. If guilty of crimes, they were punished; but otherwise enjoyed the full protection of the law.”

English “Right of Asylum,” though with particular references to refuge for alleged malefactors, was ably described at length in Professor N. M. Trenholme’s “Right of Sanctuary in England” (Columbia, Mo., 1903), and Rev. J. Charles Cox’s “Sanctuaries and Sanctuary Seekers of Mediaeval England” (London, 1911), both drawing largely on Reville’s more specialized study of “Abjuration of the Realm,” entitled “*L’Abjuratio Regni: historie d’une institution anglaise.*” *Revue Historique* (1892),¹⁰ and numerous other works.

Prof. Trenholme traces back the origin of the related English custom of “Abjuration of the Realm” to Anglo-Saxon “outlawry” and well says: ¹¹

“Outlawry, combined with the right of asylum, was in all proba-

¹⁰ Vol. 50, pp. 1-42.

¹¹ Pp. 16, 17, 22, 24.

bilities the origin of abjuration of the realm. . . . Any man who in Anglo-Saxon times committed a grave offense or wrong, and fled from punishment was generally proclaimed an outlaw. . . . Any one could kill him with impunity, and his safest place of resort was beyond the seas. Outlawry, therefore, was equivalent in most cases to exile or banishment. . . . In outlawry the elements existed which went to make up the later oath of abjuration or forswearing of the realm, administered to sanctuary-seekers, who chose to avail themselves of it. . . . (In such later development) a fugitive would seek sanctuary where he would be safe from the secular arm. Some remedy was clearly needed for such a state of affairs, and the remedy chosen was to make him an official outlaw, while sparing his life and person. Sanctuary-seekers were, therefore, required to submit to trial, or take on oath by which they abjured the realm forever. On the latter condition they were allowed to depart unharmed from the precincts of the sanctuary, to take their journey into exile. . . . The English form of ecclesiastical immunity was an adaptation to national institutions and needs, and abjuration became a peculiarly English institution. . . . After making confession, the criminal was allowed forty days' grace, at the expiration of which time he had either to adjure the realm or stand trial in the royal courts. Clothed in a white robe, which bore the red cross of mercy, these unfortunate beings journeyed along the king's highway, turning neither to the left, nor to the right, for fear of being slain, until at last, foot-sore and weary, they would reach the port of embarkation. There they took the first available ship across the seas. Their oath of abjuration bound them never to set foot in England again, save by license of the king."

In 1316 Edward II enacted a statute¹² in line with earlier English laws, that abjurers, on their way to the port of embarkation, must not be molested, and that no fugitive to a church was to be slain, unless found outside of sanctuary limits. Incomplete English records indicate that not less than a thousand persons per year in England sought asylum at the sanctuaries during centuries, and down to modern times, and the exceptions to whom asylum was denied were very much the same as in Roman days, they growing from time to time as law and order developed.

Rev. J. Charles Cox's elaborate and interesting work on the English institution is based upon a close examination of available original British Assize Rolls, Coroner's Rolls, etc., and the grants of asylum, and oc-

¹² 10 Edw. 11 c. 7.

casional violation of sanctuary, as in the case of the famous murder of Thomas Becket in 1170, are among the most dramatic incidents in English history. Mr. Cox makes the interesting comment¹³ that there is no evidence of any payment being made to the vessel on which the abjurer embarked, and that probably the first available ship was compelled to carry such passenger, and he also suggests that the abjurer, when he arrived abroad, doubtless relied upon the protection accorded there also to seekers of asylum, as an institution flourishing under universal Papal protection was involved, enabling the insufficiently clad fugitive, cross in hand, to receive shelter and food for a time at least, at the hands of the clergy, the religious and the faithful laity.

Nor should it be forgotten that England recognized her reciprocal duty from early times on, to protect the alien and the fugitive from foreign lands in her own domains. As was pointed out in the passage from Thomas Erskine May, Magna Charta itself expressly safeguarded the rights of the aliens, the passage reading:

“All foreign merchants (*mercatores*) (if they were not openly prohibited before) shall have their safe and sure conduct to depart out of England, to some into England, to tarry in and go through England, as well by land as by water, to buy and sell without any manner of evil tolls, by the old rightful customs, except in time of war.”

and Hale, in his “Pleas of the Crown,”¹⁴ long ago indicated that there were not apt to be many but merchants coming into England from abroad in those days, so that,

“the statute speaks indeed of *mercatores*, but under that name all foreigners living or trading here are comprised.”

But in another respect also, Magna Charta protected the rights of the seeker of asylum, native or alien, and that was in its guarantees of the rights of the Church, which included right of asylum, and which had been the subject matter of controversy between Crown and Church previously, from time to time.¹⁵

Naturally enough, the Reformation and its attending weakening of Church influences, and the war against the monasteries, increased the tendency to curtail right of asylum, especially in churches and mon-

¹³ P. 31, et seq.

¹⁴ I, p. 93, Am. Ed. of 1847.

¹⁵ See Wm. F. Craies on “Compulsion of Subjects to Leave the Realm” in 6 Law Quarterly Review, p. 393, citing article by Reichel in the “Law Journal” (England), Sept. 21, 1889, p. 543, on “Magna Charta and the Liberties of the Church.”

asteries, both in England and on the continent, and in England the right, as regards domestic criminals, after being recognized for churches as late as Henry VIII's statute in 1540,¹⁶ is commonly spoken of as abolished by a law of James I of 1624 of limited scope¹⁷ and finally in 1697 by the Act¹⁸ as to sanctuaries. On the continent it lingered on until about the time of the French Revolution, when disabilities of foreigners and the oppressed generally, were so largely abolished, and it survives, apart from the so-called "figurative" sense of a principle to welcome foreign fugitives, today, chiefly in exemption from foreign extradition, where not covered by extradition treaties, and in Asylum at Embassies and Consulates and on foreign warships. Abjuration of the realm had meantime been in terms abolished in England in 1530,¹⁹ because "the strength of the realm was much diminished through the deportation of numerous sanctuary seekers who each year abjured the realm, by this means lessening the population and further harming the country by instructing foreigners in archery and disclosing the secrets of the realm," but was expressly revived soon afterwards, and enacted into law by that very name by Queen Elizabeth, in a form in which it expressly remained on the statute books until the end of the 18th century as to Catholics, as a substitute punishment for English Roman Catholics and Protestant dissenters convicted of having refused to attend the services of the Church of England after warning.²⁰ When enacted, these statutes required such religious refugees to abjure not only "this realm of England," but also "all other the Queen's majesties' dominions forever," but we shall presently see that American colonial charters in many cases gave leave to such dissenters in the following century and thereafter, to settle in England's American colonies, and these provisions were important contributions in the direction of turning England's American colonies literally into "asylums" for religious refugees.

Time will not permit an account of England's glorious history, which so greatly aided her own development, moreover, in affording asylum for the alien who sought refuge on her shores. Thomas Erskine May elaborated upon the same in his "Constitutional History," after summarizing her course in the passage above quoted, and while pointing out that it often threatened to embroil her with the countries from which

¹⁶ 5 Pick. Stat., p. 20.

¹⁷ 21 James I, c. 28.

¹⁸ 8-9 William III, c. 26.

¹⁹ 22 Henry VIII, c. 14.

²⁰ 35 Eliz. c. 1, 2 (1593); Pickering's Statutes at Large, Vol. 6, pp. 423, 430.

the fugitive came, and it is summarized in Henriques' "Law of Aliens" and in the work by Sibley and Elias above cited, and in many interesting historical legal articles.²¹ Particularly significant was the vigorous negative answer given by Lord Hawkesbury on June 10th, 1802, to the demand of Napoleon Bonaparte, during a short peace between the two countries, that French princes and bishops be expelled from British dominions "whose political principles and conduct must necessarily occasion great jealousy to the French Government," to the effect that "His Majesty would feel it inconsistent with his dignity, with his honor and with the common laws of hospitality, to deprive them of that protection which individuals resident in his dominions can only forfeit by their own misconduct;" which refusal was reiterated, when even more strenuous demands were made by Napoleon. Lord Palmerston as Home Secretary also stated in Parliament that the Government could not expel foreign refugees, in the absence of a statute giving the right. May adds:

"It is not enough that the presence or acts of a foreigner may be displeasing to a foreign power. If that rule were accepted where would be the right of asylum? The refugee would be followed by the vengeance of his own government, and driven forth from the home he had chosen in a free country. On this point, Englishmen have been chivalrously sensitive. Having undertaken to protect the stranger, they have resented any menace to him, as an insult to themselves. Disaffection to the rulers of his own country is natural to a refugee; his banishment attests it."

Around the time of Orsini's conspiracy in 1858, a British ministry was even swept out of office by Parliament, for yielding to French demands for fresh legislation, to abridge right of asylum. In 1841 Britain risked serious diplomatic differences with the United States, in refusing to surrender about 100 slaves who had been carried on the American ship *Creole*, and had mutinied, taken possession of the ship, and landed at Nassau in the Bahamas. After a discussion in the House of Lords, participated in by Lords Lyndhurst, Brougham, Campbell, Abinger, Sir Frederick Pollock and others, England persisted in applying the rule that the right of asylum of British dominion

²¹ See particularly W. F. Craies: "Right of Aliens to Enter British Territory," in *Law Quarterly Review*, Vol. 6, p. 27, and his "Compulsion of Subjects to Leave the Realm" *Id.*, p. 388; Haycroft's "Alien Legislative and the Prerogative of the Crown" in *Idem.*, Vol. 13, p. 165; G. A. Smith on "The Right of Asylum" in *Idem.*, Vol. 27, p. 199; N. W. Sibley's "International Law and the Alien Act" in *Law Magazine and Review*, 5th Series, Vol. 34, p. 432; *Law Times*, Vol. 130, pp. 253, 254, and Oppenheim's "International Law," Second Ed., Vol. I, p. 390, et seq., with its detailed bibliography.

had liberated even the mutinying slaves.²² British jealousy of infringement of right of asylum is illustrated by the anecdote that King Charles II was advised that powerful sovereign though he was, he could not expel an objectionable foreigner who made open love to his principal favorite. In fact, England went so far, in early days, to protect resident aliens in time of peace, that mixed juries of subjects and aliens were provided for,²³ to try cases involving aliens, and it is said that bills of exchange at first applied only to strangers trading with British merchants.²⁴ When England in 1905, yielded to the demand that a bill analogous to our American immigration laws be enacted, to exclude persons who were diseased or criminal, or likely to become public charges, even the last specified clause was so phrased, as to expressly except

“an immigrant who proves that he is seeking admission . . . solely to avoid prosecution or punishment on religious or political grounds, or for an offense of a political character or persecution involving danger of imprisonment or danger to life or limb on account of religious belief.”

It has been claimed that this was an affirmative enactment on behalf of right of asylum, and in the debate on this bill in Parliament, some of the finest expositions of right of asylum ever formulated were expressed, participated in by the Prime Minister, Arthur Balfour, Sir Robert Finlay, Sir Charles Dilke, James Bryce, Mr. Asquith, Mr. Trevelyan, Mr. Burns, Lord Hugh Cecil, Sir Rufus Isaacs and others,²⁵ the opposition even contending that the sacred right of asylum to refugees was being unwisely curtailed, even by this language. In one respect, however, England has failed to follow our example in safeguarding right of asylum for aliens: she has refused to permit immigration officials' decisions, excluding avowed aliens, to be reviewed in her courts either by writ of habeas corpus or otherwise.²⁶

Reference was already made to the circumstance, which affords a convenient passageway from right of asylum in England to that in America, namely, the enactment of statutes for the enforced abjuration of the realm by English Catholics and Protestant dissenters. Though England (as well as Continental Europe) in general prohibited emigra-

²² 64 Hansard, 27-30, 217, et seq.; compare Butler's *Judah P. Benjamin*, pp. 40-43; life of J. R. Giddings and papers of Daniel Webster.

²³ By 27 Edw. III, St. 2.

²⁴ *Select Essays in Anglo-American Legal History* I, 303, 367-463; III, 18, 78.

²⁵ *Parliamentary Debates*, 4th Series, Vols. 148-169.

²⁶ *Musgrave v. Chun Teong Toy*, 1891 L. R. App. Cases, 272.

tion to foreign territory, with specified exceptions, made up chiefly of religious and occasional political refugees, until after the Napoleonic Wars,²⁷ the charters under which the American colonies were settled, first in general terms, and thereafter specifically, authorized such dissenters, whose faith was punished as a violation of her own criminal laws at home, to settle in the New World.²⁸ The provision in the charter granted by Charles II to Rhode Island in 1663 is typical and particularly illustrates this point; it provided leave to settle

“with a full libertie in religious concernment;” . . . “because some of the people and inhabitants of the same colonie cannot in their private opinions conforme to the public exercise of religion according to the liturge, formes and ceremonies of the Church of England, or take or subscribe the oaths and articles made and established in that behalfe, noe person within the said colonye at any time hereafter, shall bee anywise molested, punished, disquieted or called in question for any differences in opinione in matters of religion, and do not actually disturb the civil peace of our sayd colonye.”

We thus see that literally, and not in a mere figurative sense, America became avowedly an asylum for religious and political refugees, from early times on, and a number of other interesting historical precedents of abjuration of England being ordered to persons banished to America in colonial days are collated in Mr. Craies' interesting article, “The Compulsion of Subjects to leave the Realm.”²⁹ One of the grievances formulated by the fathers of the republic in the Declaration of Independence was that the king

“had endeavored to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their immigration hither.”

When the “Alien and Sedition Laws” were passed by Congress in 1798 we were overcome by a dread of imminent foreign war, but those measures were bitterly opposed by the party of Jefferson, and were in fact largely an imitation of England's own temporary departure shortly before, from her precedents as to right of asylum, as evidenced by her

²⁷ Johnson's *Emigration from the United Kingdom to North America, 1763—1912*, pp. 57, 180, 181.

²⁸ Benj. Perley Poore's *Federal and State Constitutions, Colonial Charters, etc.*, pp. 1890, 1891, 811, 1512, 1595, 1596 (Rhode Island), 1382, 369.

²⁹ *Supra*; compare Prof. T. W. Page's interesting series of historical articles on the motives of immigrants to America in Vols. 19, 20 and 21 of the *Journal of Political Economy*.

alien act of 1793. It will, of course, be remembered that our Alien and Sedition Acts swept the Federalist party out of power, and made it unsafe, for many decades, even to advocate similar measures. The protests of Jefferson and Madison against such legislation, in the shape of the Kentucky and Virginia Resolutions of 1798 are, of course, important documents in American history.³⁰ They proceeded largely on the theory of lack of constitutional power in Congress to enact such laws, and Jefferson's draft of the Kentucky Resolutions proclaimed: "Alien friends are under the jurisdiction and protection of the laws of the state wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual states, distinct from their power over citizens." The "right of asylum" passage from the Democratic platform of 1800 and Jefferson's Presidential Message of 1801, hereinbefore cited, put the objection on other grounds, and it will be remembered that our U. S. Supreme Court, some decades later, reversed the constitutional theory formulated by Jefferson in the Kentucky Resolutions, and held that the federal government has such inherent sovereign power of excluding and expelling aliens, though not expressed in the Constitution, and that extra-constitutional methods are authorized, free from the ordinary constitutional restraints, in dealing with congressional legislation for the exclusion and expulsion of aliens.³¹ Jefferson, of course, was influenced, in his protests against the Alien and Sedition Acts, not merely by his sympathy for the French refugees, but also by the theory of natural rights formulated by leaders of the French Revolution (which also found expression in our Declaration of Independence), including the so-called natural rights of aliens to enter.³² Some interesting, but now largely obsolete theories of early publicists along these same lines, as to aliens, are collated in Sibley and Elias' interesting booklet, including statements by Grotius and Pufendorf, and, in fact, natural law did indeed constitute an important source of law, in fixing the rights of aliens in the development of international law, as is well shown in Bernheim's

³⁰ See Elliott's Debates, Vol. 4, pp. 528-554, and F. M. Anderson's papers "Contemporary Opinion on the Virginia and Kentucky Resolutions" in *Am. Hist. Review*, Vol. 5, pp. 45, et seq., 225, et seq., and his paper on "Enforcement of the Alien and Sedition Laws," *Am. Hist. Ass'n Reports* for 1912; Ford's "Jefferson's Writings," VII, 245, et seq., particularly p. 291, note and Hunt's "Madison's Writings" VI, 320, et seq.

³¹ *Chinese Exclusion Case*, 130 U. S. 581; *Fong Yue Ting v. U. S.*, 149 U. S. 698; *U. S. v. Ju Toy*, 198 U. S. 253; *Nishimura Ekiu v. U. S.*, 142 U. S. 651; *Japanese Immigrant Case*, 189 U. S. 86; compare *Chin Yow v. U. S.*, 208 U. S. 8 and *Gegiow v. Uhl*, 239 U. S. 3.

³² But see Attorney General Cushing's views in 8 *Opinions Attys. Gen.* 163.

"History of the Law of Aliens." This was due to the fact that we start, from the strict point of view of the law, including even the Roman law, from the standpoint, that the alien is lawless, except in as far as treaties granted rights to him, and the modification that first grafted itself upon this doctrine was to allow him the "rights of natural law."³³ It is interesting to note, in fact, that in Jefferson's draft of his Presidential Message of 1801 he had coupled with his passage about right of asylum, the following additional clause: "Every man has a right to live somewhere on the earth, and if somewhere, no one society has a greater right than another to exclude him."³⁴

As it became axiomatic in American constitutional law at an early date that the executive power could not restrain the rights, in times of peace, either of alien or citizen, except in as far as affirmatively authorized by statute, and no federal alien acts were passed after the repeal of the Alien and Sedition Laws, until the latter part of the 19th century, American courts and American writers had little occasion to occupy themselves with right of asylum.³⁵ On the contrary, we early developed as a cardinal canon of construction of statutes, the principle that all laws in derogation of liberty must be strictly construed, and applied this principle freely, both in favor of citizen and alien. Moreover, even statutes making the action of immigration authorities in excluding aliens final, have been held by the courts to contemplate finality on disputed questions of fact only,³⁶ and to require such forms of hearing as constitute due process of law for administrative hearings.³⁷ Practically the only instances in which the American courts were called upon in terms until recently to define right of asylum, were in cases where it was sought to revive the doctrine to our obvious national detriment, in dealing with criminals, and it was properly held that, as between the States of the Union, there is no right of asylum for fugitive criminals, forbidding a state from trying a criminal whom it seizes, who has escaped from the criminal jurisdiction of another state, unlike the case of foreign countries seeking to try offenders for crimes not covered by extradition treaties,³⁸ even though no procedure

³³ P. 65, et seq.; see also Proceedings of the 5th Annual Meeting of the "Am. Society of International Law," 1911.

³⁴ Ford Id. VIII, 124.

³⁵ See 4 Moore's Int. Digest, Sec. 580, et seq., and especially U. S. v. Robins in 27 Federal Cases 16175, and U. S. v. Rauscher, 119 U. S. 407.

³⁶ Gegiow v. Uhl, 239 U. S. 3.

³⁷ Chin Yow v. U. S. supra; Gegiow v. Uhl, supra; Davis v. Manolis, 179 F. R., 818, 821, C. C. A.

³⁸ Mahon v. Justice, 127 U. S. 700; Ker v. Illinois, 119 U. S. 436.

exists to compel delivery up of persons charged in one state, who are not fugitives from justice³⁹ and again, that persons cannot commit crimes amounting to a breach of the peace on foreign merchant vessels lying in our ports, and successfully claim to be immune from punishment here.⁴⁰

Strangely enough, it was Thomas Jefferson who avowedly and publicly declined, in our national infancy, to commit us to the then prevailing British policy of refusing to make extradition treaties with foreign governments, and he wrote an interesting opinion for Washington in 1791-1792, refusing to follow British precedents, and advising that we make extradition treaties with countries that could be relied upon to administer justice fairly, so as to cover certain specified crimes.⁴¹ Of course, both our extradition treaties and our immigration laws have for a long time, expressly excepted purely political offenses, and England has found herself compelled to follow our example in making extradition treaties, but containing such reservations. Even if, at times, there be danger of using the deportation machinery of our immigration laws to effect the deportation to a demanding state, of a political offender, the courts are wary to prevent substantial infringement of right of asylum, as witness their recent reversal of the executive authorities in the *Castro* and *Mylius* cases,⁴² and the refusal of extradition of *Pouren*, of Irish patriots and others.⁴³ In fact, we have, of course, gone further and in effect established the doctrine of expatriation and induced most of Europe to recognize it, freely enabling foreign fugitives to become naturalized here, and sustained their rights as against foreign prosecutions for political offenses committed before their arrival here, and at times even asserted such demands on behalf of persons who had merely declared their intention to become U. S. citizens.⁴⁴

While Congress has, at last, passed an immigration bill, avowedly restricting immigration, instead of merely regulating the same, by imposing a literacy test, after four Presidential vetoes of the test, the

³⁹ *Hyatt v. Corkran*, 188 U. S. 691.

⁴⁰ *Wildenhus Case*, 120 U. S. 1.

⁴¹ *Ford's Jefferson's Writings* V, 386, 456, 493; compare IV, 426.

⁴² *Castro Case*, 203 F. R. 155; *Mylius Case*, 203 F. 152, aff. 210 F. 860.

⁴³ *Moore's Inter. Law Digest*, Sec. 604; *Ornelas v. Ruiz*, 161 U. S. 502; *Petit v. Walsh*, 194 U. S. 205; *Am. Society Int. Law Proceedings* for 1909, pp. 95-165; addresses of J. R. Clark, F. R. Coudert, Jr. and Julian W. Mack; also "The Case of Jan Janoff Pouren," and opinion of U. S. Commissioner Hitchcock, of March 30, 1909.

⁴⁴ U. S. Rev. St., Sec. 1999; J. B. Moore's *American Diplomacy*, pp. 168-199, and *Int. Law Digest*, *Kozta's case*; compare *Kossuth's Reception*, discussed in O. S. Straus' "The American Spirit."

new Act expressly exempts religious refugees from the literacy test, and in language clearer and more effective than the British Alien Act does. It is true that political refugees were not exempted from this specific provision, though they are under others, but the number of illiterate political refugees, unable to read any language, discriminated against, is necessarily so small in our day as to be practically a negligible quantity. The religious refugee exemption, however, is likely to grant right of asylum to many illiterates, often denied educational opportunities by discriminatory foreign laws and practices, and the provision is likely to compel us once more, to study more closely the history of "right of asylum for the alien." May our country not depart from these hallowed traditions, so as to exclude any religious refugee who is physically, mentally and morally healthy, not a contract laborer, and not likely to become a public charge, seeking asylum on our beloved soil!

THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS*

A Hundred Years Ago and Now

When President Wilson in one of his speeches on the peace treaty with Germany (Columbus, September 4, 1919) said, "This treaty contains among other things a magna charta of labor, a thing unheard of until this interesting year of grace," he forgot that very similar discussions on the amelioration of conditions of labor and other humanitarian considerations to those now taking place in Washington were a feature of the conference of Aix-la-Chapelle in 1818, almost exactly a hundred years ago. That conference was called to complete the work of the Congress of Vienna, 1814-15, by which the liberation of Europe from the Napoleonic yoke had been sealed. Two of three main points of general humane interest and importance debated at that conference were again raised at Versailles in 1918 in a new form. These three questions were:

Improvement in the condition of labor;

Abolition of the slave trade;

Religious liberty and abolition of religious and racial tests as affecting civil and political rights.

The first effort to secure an amelioration in the condition of labor through international agreement is associated with the name of Robert Owen, the English and American social reformer. He decided to submit to the Conference of Aix-la-Chapelle two interesting and able extant memorials, entitled *Two Memorials on Behalf of the Working Classes*, which he had prepared for the purpose printed in English, French and German, and dated respectively Frankfort, September 20, and Aix-la-Chapelle October 22, 1818. They dealt with the "present state and future prospects of society," taking into account "increase in wealth and other changes, wrought by the overwhelming effects of new scientific power and the rapid increase of knowledge among all classes of men." One was entitled *Memorial to the Governments of Europe and America on Behalf of the Working Classes*; the other, *Memorial to the Allied Powers Assembled in Congress at Aix-la-Chapelle*. The latter contains an elaboration of the principles set forth in the former.

* *The Survey*, Vol. 43, pp. 179-182, Nov. 29, 1919.

Robert Owen's own autobiography, the chief and practically sole source of information on the subject, contains a reprint of the two memorials. He had come very prominently before the English public during the preceding few years through his economic experiments at New Lanark, where he conducted successfully a business establishment on philanthropic and cooperative lines, and his efforts on behalf of common schools and other philanthropic experiments had aroused much attention. Among his friends and supporters were Jeremy Bentham, William Allen, Lord Liverpool, John Quincy Adams and the Duke of Kent. He went to Aix-la-Chapelle, via Frankfort-on-the-Main, armed with a letter of introduction "from my friend, the late celebrated Nathan Rothschild" (head of the English banking-house), to the well-known Frankfort banker Bethmann, friend and host of the Emperor Alexander of Russia. Bethmann was one of the most influential and prominent bankers in Europe at the time, and also Russian consul general at Frankfort. Owen met Friedrich von Gentz, secretary of the conference, whom he describes as "learned in all the policy of the leading despots of Europe and in their full confidence," and arranged a large dinner, at Frankfort, attended by members of the German Diet sitting there, at which the guests were amused by Owen's arguments in favor of his plans for economic and social progress, more democratic government, and greater diffusion of wealth and knowledge, and criticisms of them by von Gentz, the clever and scholarly Austrian diplomat, who, with astonishing frankness, espoused the cause of rulers as against the masses, while giving theoretical approval to some of Owen's theories. Owen quotes him as saying, very cynically, after he had himself advocated a better distribution of wealth, so as amply to supply the wants of all through life, "Yes, we know that very well, but we do not want the mass to become wealthy and independent of us. How could we govern them if they were?"

Although the Gentz literature, already enormous, is increasing year by year, no reference by Gentz to this incident has been found, except a casual entry in his diary under date of September 7, 1818, in which the fact is mentioned that Gentz dined that day at Bethmann's, in Frankfort, and met there among others, Owen, whom he describes as "the English philanthropist."

Owen accosted Alexander I. on the streets of Frankfort and was offended when the czar asked him to call on him that evening at Bethmann's house instead of accepting copies of the memorials from

him on the street. The memorials were presented to the conference at Aix-la-Chapelle through Lord Castlereagh, Owen adding that the latter "in the most friendly manner, promised to present these documents to the Congress under the most favorable circumstances. He did so, and it was stated to me in confidence on my return to Paris by one of the members of the government, that those two memorials were considered the most important documents which had been presented to the Congress during its sittings." Owen himself added, in 1857, "The subjects of these memorials were new to the members, and opened to them a wide field for investigation and research. They were also prophecies, which are now fulfilling in part, and will ultimately become truthful to their full extent." They are, moreover, of considerable historical value as showing what economic changes had already been effected in 1818 by the invention of machinery and better conditions of living and schooling. The official protocol of the conference seems, however, entirely silent on the subject.

Knudson's "Life and Letters of Zachary Macaulay" contains an extremely interesting contemporaneous account of an interview which Thomas Clarkson had with the czar, at which the latter gave his views on this subject, arbitration, the abolition of the slave-trade, and other questions that came up before the conference. The czar expressed disapproval of Owen's plans, briefly, for the following, extraordinary reasons:

I altogether disapprove of Mr. Owen's views and plans. He proceeds on the assumption that man may become a perfect being, even here. Who that knows his own heart and the demands of God's law would ever dream of this? . . . Mr. Owen also insists much on certain facts as proving his theory. But facts in the hands of such a man are anything he chooses to make them. I distrust all such facts as contradict Scripture. Mr. Owen's defect, after all seems more of the head than the heart.

The czar's utterances on the same occasion as to international arbitration and organized efforts to preserve peace are also interesting. Talking of the peace societies, he said:

Expecting, as I certainly do, the arrival of a period when, through the prevalence of the Gospel, nations shall learn war no more, I cannot disapprove of any societies who propose to hasten so desirable a consummation. I had hoped at one time to connect with the Holy Alliance a plan of arbitrating national differences so as to avoid all future appeals to arms, but things were not ripe

for it. As an approach to it I mean to propose that, as the sovereigns of Europe now know each other as friends, a meeting shall take place between them once in every three years for the general objects of redressing wrongs, conciliating differences, checking tendencies to war, removing causes of discontent, and advising with each other as to the means of preserving the general tranquility, promoting the general happiness, and diffusing knowledge, civilization and the blessed light of religion throughout the world.

It is interesting to find an uncle of Lewis Way describing Alexander I. in a letter to Castlereagh at this very time as "one who knows how to mix piety and self-interest, and (he) is as political as he is chimerical." (Castlereagh's Letters and Dispatches Vol. XII.)

The lapse of a century since that conference, however, assured not merely more careful consideration today, of similar plans for a league to enforce peace, but also the adoption of provisions for conferences at which the demands of organized labor for an eight-hour law, reasonable wages, equal pay for men and women, prohibition of importation of goods made by children under 16 years of age, and the like, should be considered—demands such as Owen, in a general way at least, contemplated and predicted.

THE SLAVE TRAFFIC

As regards abolition of the slave-trade, it will be remembered that England, in particular urged by her great humanitarian leaders, William Wilberforce, Thomas Clarkson, James Stephen, Granville Sharpe, Zachary Macaulay, and their associates, brought up this question for settlement at Vienna. Having shortly before prohibited the slave trade for her own dominions, she secured the adoption of an international declaration in opposition to such barter in human lives, at Vienna in 1815, reaffirming a similar declaration of the preceding year in the first Treaty of Paris. The matter was again brought up, with a similar result, at Aix-la-Chapelle. In neither instance was action as definite and effective as the anti-slavery leaders desired. At Vienna, despite Wilberforce's personal efforts, it appears that France, Spain and Portugal were unwilling to secure effective action because, for economic reasons, they wanted to continue the slave-trade in connection with their colonial possessions. It was, however, declared that the trade is "the desolation of Africa, the degradation of Europe and the afflicting scourge of humanity," and that the "final triumph of

the cause of abolition would be one of the greatest monuments of the age." It is interesting to learn from the life of Wilberforce by his sons, how the personal aid of the then at least professedly liberty-loving czar, Alexander I., was enlisted in the cause as Wilberforce's only hope, in view of discouraging statements from his own representative, Castlereagh.

An English missionary, the Rev. Lewis Way, served as intermediary; he had a long interview with the czar at St. Petersburg shortly before the Conference of Aix-la-Chapelle met, described by Way as "not an audience of a private man with an emperor, but rather a most friendly exchange of views, of a Christian with a fellow-Christian." Moreover, as the British government, despite "cold-blooded" Castlereagh's and Wellington's interest in the subject, might not be expected to take as vigorous action as was desired in the matter, Wilberforce induced Thomas Clarkson to attend at Aix-la-Chapelle, where on October 10, 1818, he delivered a printed memorial in the course of a long interview with Alexander I., an account of which he gave to the Duke of Wellington and Macaulay. Clarkson had been selected by Wilberforce because his personal views, Quaker frankness and unofficial status gave him more freedom to act than he himself might have had, rendering him, as Wilberforce expressed it at the time, "formed by Providence for the purpose." Meantime, James Stephen had sent the official memorandum of the abolitionists to Lord Castlereagh on September 8, 1818, and rather disingenuously described Clarkson as "still holding his purpose of going to Aix-la-Chapelle," but himself assured the distinguished British envoy that one of the first copies from the press of Clarkson's memorandum would be sent to him. Apparently, the other sovereigns present at the conference received copies, as per arrangement, of this Clarkson memorial, through the czar, and it was Russia in fact, the land of the serfs, that brought the slavery matter up at the conference. This fact was only recently authoritatively established through F. F. Marten's published collection of Russian treaties which he annotated through use of unpublished Russian diplomatic documents. It is a striking illustration of "secret diplomacy," that the bulk of the debates of this conference, (which lasted nearly two months), and even some of its determinations, still remain unpublished, after a hundred years!

The United States, had not waited for action at this conference, but had entered into a special agreement with England, prohibiting the traffic, in the Treaty of Ghent of 1814, which ended the War of

1812. In it the traffic was described as "irreconcilable with the principles of humanity and justice." The necessity of enforcing even such humane prohibitions within each sovereignty by its own agencies was, however, emphasized vigorously, soon after, on November 2, 1818, by our secretary of state, John Quincy Adams, himself a negotiator of the treaty of Ghent, in protesting against England's violation of our rights through search and seizure of American alleged slave-trafficking vessels; and Adams wrote on April 29, 1819, that the opponents of the slave-trade were introducing, and had already obtained, the consent of Spain, Portugal and the Netherlands to a new principle of the law of nations, more formidable to human liberty than the slave-trade itself—a right of the commanders of armed vessels of one nation to visit and search the merchant vessels of another in time of peace. The treatment of slaves came up indirectly only, at Versailles this year, in connection with German African colonies.

RELIGIOUS LIBERTY NO MERE DOMESTIC AFFAIR

As regards religious liberty and the abolition of religious tests as affecting civil and political rights, some substantial progress was made both at Vienna and at Aix-la-Chapelle. The action then taken was inconsistent with the theory that these are purely internal affairs. The joinder of Holland and Belgium in the new kingdom of the Netherlands, under the rule of the house of Orange, was approved at Vienna on the irrevocable condition that all creeds should possess equal protection and rights, and all public offices and posts should be open to all citizens, regardless of religious faith. Though the inhabitants of Belgium were almost wholly Catholic at that time, this clause fully emancipated her Protestant and Jewish subjects; but so much opposition to it was aroused that the Belgian Assembly of Notables rejected it on August 18, 1815. King William I. of the Netherlands, nevertheless, proclaimed it in force, declaring the rejection illegal and inoperative, because inconsistent with the treaty. Under the leadership of Maurice de Broglie, bishop of Ghent, one political party in Belgium thereupon declared it to be treason to religion to take an oath to support the constitution which embodied this provision, but he himself fled to escape civil prosecution, and after some years the Pope sanctioned the clause in the name of the church. Jean De Ridder, a Belgian publicist, in an almost unknown technical periodical, has well described this clause as one of the great landmarks in the history of religious liberty. It is an almost unique, but important

European precedent followed a hundred years later at Versailles in the treaty with Poland for giving direct effect to a treaty as avoiding subsequent state legislation.

It is quite certain that this provision met with practically unanimous approval on the part of the distinguished men in attendance at Vienna, including Castlereagh, the Duke of Wellington, Talleyrand, Metternich, Prince Hardenberg, Baron Wilhelm von Humboldt, Stein, Alexander I., Friedrich von Gentz, Capodistras and Nesselrode. It is also interesting to find this Dutch precedent expressly referred to by Clemenceau, as chairman of the Peace Conference, in his able official letter of June 24, 1919 to M. Paderewski, (entirely too much neglected in our newspapers), transmitting the Polish treaty—a letter which is sure to become a classical state document in the history of religious liberty and its international sanctions. This document, and the treaty which accompanied it, have definitely established international sanctions and international protection for religious liberty and equality, the world over, and the civil rights of minorities, as required by the dictates of civilization. For this principle our country has consistently stood, at home and abroad ever since 1789, and it is no secret that this result was achieved at Paris this year largely through the efforts of our American envoys and representatives, with President Wilson's warm support.

But considerable further progress for the cause of religious liberty and democracy was also made at the Congress of Vienna, in 1814-15, in its formulation of a Germanic constitution. It was expressly provided in the treaty that the "different Christian sects in the countries and territories of the German Confederation shall not experience any difference in the enjoyment of civil and political rights," a remarkable advance over the provisions of the Treaty of Westphalia of 1648, which terminated the Thirty Years War, and was till then operative, permitting each sovereign to decide what religion should be tolerated in his territory.

The advance moreover, was not merely academic, for until then Catholics were under disabilities in various Protestant German states, and Protestants in Catholic states. But such progress was not confined to Christian denominations, all of which were officially represented among the sovereigns ruling in Europe. The Germanic Constitution, in the same article, proceeded to declare—to quote the version given in Herstlet's Map of Europe by Treaty:

The diet shall consider of the means of effecting, in the most uniform manner, an amelioration in the civil state of those who

profess the Jewish religion in Germany, and shall pay particular attention to the measures by which the enjoyment of civil rights shall be secured and guaranteed to them in the confederated states, upon conditions, however, of their submitting to all the obligations imposed upon citizens. In the meantime, the privileges already granted to this sect by any particular state shall be secured to them.

It was particularly through the efforts of the leading men among the representatives of the German states concerned, Prince Hardenberg, Wilhelm von Humboldt, Metternich, Gentz and Wessenberg, that this ameliorating clause, prayed for by the Jewish delegation, was adopted, despite objection and jealousy on the part of some of the smaller states. However, as a result of an unfortunate compromise, due to jealousy of state rights, and bigotry, the clause was left in such indefinite form as to be unsatisfactory; and its execution was committed to a weak diet which soon yielded to reaction and narrowness and rendered it practically a nullity. Grave anti-Semitic persecutions in Germany followed. It has recently been established that the action of the King of Prussia, in expressly instructing Prince Hardenberg to cease espousing the Jewish cause at the diet, was largely responsible for this result, Hardenberg being thereby prevented from continuing to support England, Austria and Russia in efforts to force Frankfort to give effect to these clauses in aid of the Jews of that city.

Naturally many friends of the Jewish cause turned with eagerness for relief to the Conference of the Sovereigns called together at Aix-la-Chapelle in the fall of 1818, primarily to arrange for the evacuation of France by the troops of the Allies, the adjustment of France's indemnity obligations and the admission of France into the Holy Alliance of the Powers. Among these friends was the aforementioned English missionary, Lewis Way, who had become deeply impressed with the sufferings of, and discriminations against, the Jews, and had enlisted Emperor Alexander's aid for their relief. At the suggestion, it appears, of the czar himself, Way presented to the assembled sovereigns at Aix-la-Chapelle, a memorial in favor of complete Jewish emancipation, accompanied by the outlines of a plea in behalf of the Jews, prepared by the German statesman Dohm, whose earlier epoch-making work on the subject, published in 1781, had done much to secure Joseph II's imperial toleration edict, Prussian emancipation legislation, and amelioratory measures in France, Holland and Russia. At the Aix-la-Chapelle conference, accordingly, on November 21, 1818, the following declaration signed by Metternich, Hardenberg, Richelieu,

Bernstorff, Castlereagh, Nesselrode, Wellington and Capodistras, was adopted:

Without entering into the merits of the views entertained by the author of the project [Way], the Conference recognizes the justice of his general tendency, and takes cognizance of the fact that the plenipotentiaries of Austria and Prussia have declared themselves ready to furnish all possible information concerning the Jewish situation in those monarchies, in order to clarify a problem which must claim the attention equally of the statesman and the humanitarian.

It will be remembered that repeatedly since then, particularly at the congresses of Paris, Berlin, Bucharest and Algeciras, action was taken to secure complete religious liberty and equality of rights, regardless of creed, and that our own country, in its diplomatic correspondence, and lately, in congresses, took the lead in advocating such international action. At Versailles President Wilson himself was the most ardent supporter of these fundamental rights. In a recent paper on Jewish Rights of International Congresses, published in the American Jewish Year Book for 1918, I collated a number of these earlier precedents. Some of them I set out in greater detail last year in a booklet entitled Jewish Rights at the Congresses of Vienna and Aix-la-Chapelle.

The historical analogy of the League of Nations Covenant with the International Holy Alliance to preserve peace and promote civilization, which regulated the affairs of Europe for some time a century ago, has been repeatedly pointed out, especially since such an interesting detailed account of it was published a few years ago by W. Allison Phillips, the able English historian, entitled *The Confederation of Europe—A Study of the European Alliance 1813-1823 as an Experiment in the International Organization of Peace*. This author ably contrasts the views of Alexander I., Pitt and Metternich, in favor of such project, with the matured conclusion against it ultimately formulated by Lord Castlereagh at Aix-la-Chapelle, but at a period when popular government was still merely groping for realization. In fact, but for England's opposition, the alliance would at that time not merely have returned the emancipated Spanish-American colonies to Spain, but would have throttled liberty and progress in self-government. Fortunately, the world has been made safer for democracy since then, and no such result need be feared today from a League of Nations.

The action at the Congresses of Vienna and Paris of a century ago which permitted free emigration also presents an interesting illustration

of international action concerning a question still commonly considered a purely domestic one. While now our country is particularly interested in making reservations on the subject of immigration, affirmative international action was taken a century ago to permit freedom of migration throughout the German confederation, and to authorize departure of inhabitants during a six-year period from territory which France had to surrender at the end of the Napoleonic era. Until then, Europe quite generally forbade all immigration into foreign lands, unless under exceptional circumstances.

How far President Wilson has succeeded in preventing the Peace Conference from following the unfortunate precedent of the Congress of Vienna expressly deprecated by him a year ago, namely, the prolonged struggles of various powers to enrich themselves by wresting territory from weaker powers, is a matter as to which opinions differ widely. A century ago peace terms had been made previously with France, and the Congress of Vienna was called primarily to divide the spoils, yet its nine months of deliberation were chiefly concerned therewith, and it threatened several times to break up through impending wars between the Allies themselves over the proposed distribution. This feature was ably phrased by Sir Herbert Maxwell in his "Life of Wellington," largely in Lord Castlereagh's own words, as follows:

"Never," wrote Castlereagh to Wellington on December 7 (1814), "at any former period was so much spoil thrown loose for the world to scramble for." Russia pushed her claims upon Poland, Prussia upon Saxony, and Austria upon both; France kept a hungry eye on Holland and the Netherlands, and albeit it may savour of partiality in a British subject to affirm so much, it is patent on the instructions to her plenipotentiary that the only Great Power which had no design of aggrandizement was England, whose object was to confirm an alliance between herself and Austria, Russia and Prussia.

President Wilson, on behalf of our country, as we all know, emphatically championed terms which opposed every effort at selfish-aggrandizement. Though he admits that his efforts were not always successful at Paris, all the world can substitute the words "United States" for "England" in the passage just quoted, if it be applied to the recent conference.

THE UN-AMERICAN CHARACTER OF RACE LEGISLATION*

The above title is designed to express condemnation of legislation discriminating against particular races, and hence the objections to special legislation, commonly called by the ambiguous phrase "class legislation," as far as based on *race distinctions*, will be here considered. Proper classification, and not race discrimination, ought to underlie legislation. As applied to immigration laws, this objection seems to have been first authoritatively formulated by President Roosevelt and his able Secretary of Commerce and Labor, Oscar S. Straus, in official messages presently to be considered, but in principle such legislation is really inconsistent with the fundamental basis on which our government rests.

The war against negro slavery in the United States was conducted upon this same principle. At the Republican National Convention of 1860, before Lincoln was nominated, Joshua R. Giddings moved that the proposed party platform be amended by incorporating therein the preamble of the Declaration of Independence, in order to indicate clearly that the anti-slavery campaign was merely in harmony with that great declaration of human rights and human equality, and after this resolution had failed on account of ultra-conservatism, George William Curtis renewed the motion in slightly modified form, "daring," in the language of his biographer,¹ "the representatives of the party of freedom meeting on the borders of the free prairies in a hall dedicated to the advancement of liberty, to reject the doctrine of the Declaration of Independence, affirming the equality and defining the rights of men; the speech fell like a spark upon tinder, and the amendment was adopted with a shout of enthusiasm."

Similarly, Charles Sumner, the father of our "Civil Rights" legislation, constantly invoked the principles of the Declaration of Independence in support of his proposed measures, as also in his appeal to strike out color distinctions from our naturalization laws, when the negro was being enfranchised, but the Mongolian was still being discriminated against. "It is 'all men,' and not a race or color, that was

* From "Annals of American Academy of Political and Social Science," Vol. 84, No. 2, Set. pp. 275-293, 1909 and separate reprint No. 581.

¹ Cary's Curtis, pp. 134-5; compare Carl Schurz's Memorial Address in honor of Curtis, December 7, 1903.

placed under protection of the Declaration, and such was the voice of our fathers on the 4th of July, 1776," he argued in the United States Senate on July 4, 1870.² So, also, in the leading case of *Yick Wo vs. Hopkins*, 118 U. S. 356, the Supreme Court of the United States, with Justice Stanley Matthews as its spokesman, followed the utterances of the fathers of the republic, in reversing a decision of the California Supreme Court, and determined that a San Francisco ordinance was violative of the fourteenth amendment of the federal constitution in providing that it should be unlawful for persons to engage in the laundry business within that city, without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone, under cover of which Chinese laundrymen were forbidden to transact their business, unlike those of other races. Said the court: "The fundamental rights to life, liberty and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' . . . Class legislation, discriminating against some and favoring others, is prohibited, but legislation which in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects all persons similarly situated, is not within the amendment." Even the form of the ordinance, which concealed its ulterior anti-Chinese purpose, was penetrated by the court, in ferreting out its illegal, discriminating character.

Curiously enough, little has been written even upon class legislation in general, much less concerning legislation based upon race discriminations. The agitation against such special legislation, though it has found expression within certain limits in the fourteenth amendment to the federal constitution, in federal statutes and treaties, and in constitutional provisions in various states, forbidding anything except general legislation, upon various subjects, is, however, comparatively recent in origin, despite such isolated utterances as have been cited. Mr. Bryce, in his "American Commonwealth," writing in 1888, well points out that such prohibitions began to be adopted only during fifteen years preceding that date, approximately, and the fourteenth

² See works of Chas. Sumner, Vol. XIII, p. 482. See also XIV, 286, 301; XV, 355.

amendment was of course framed in consequence of our Civil War. The federal "civil rights" acts were passed to carry this amendment into effect, and various states thereafter adopted similar laws themselves. These restraints, such as they are, apply almost exclusively to our state governments merely, and do not affect the federal government or its agencies. Our "Bill of Rights" provisions were aimed at abuses with which the fathers of our republic were familiar, and excessive, unwise, discriminating legislation, was not then prominent among the evils thus to be avoided. In fact, we are all too prone, in these days of never-ceasing legislative activity, to overlook, in the language of Henry Sumner Maine, "how excessively rare in the world was sustained legislative activity till rather more than fifty years ago" (written in 1885), "that the enthusiasm for legislative change took its rise, not in a popularly governed country, not in England, but in France," and was quickened particularly by Rousseau's conception of the "omnipotent democratic state, rooted in natural right, which has at its absolute disposal everything which individual men value, their property, their persons and their independence," and by Bentham's plan of lodging legislative direction in the greatest number of the people, in the expectation that in employing this power in accordance with their will, they will legislate for and effect the greatest happiness of the greatest number.³

In fact, with the exception of discriminations against the negro, we had extremely few enactments based upon race distinctions upon our statute books until our Civil War period, and those that existed were nearly all survivals of the common law. Even our "Alien and Sedition Laws," adopted in 1798, largely through fear that we would be embroiled in the intense foreign wars then raging, which were proving so injurious to us and our commerce, were denounced in the Kentucky and Virginia resolutions drafted by such statesmen as Jefferson and Madison, and resulted in large degree in encompassing the ruin of the unpopular party which stood sponsor for them, and did not encourage our chief political parties to attempt further legislation against aliens in general nor individual races in particular, even in the days of "Know-Nothingism."⁴ It is in fact true, generally speaking, that our legislative race discriminations have been confined almost entirely to enactments against the negro, against the Chinese, and

³ Maine: "Popular Government," 2d ed., p. 127 *et seq.*

⁴ See the interesting summary by John Bach McMaster of "The Riotous Career of the Know-Nothings," in his collection of essays entitled "With the Fathers."

latterly also against the Japanese. Though today our anti-Chinese laws happen to be largely federal in character, the structure of our government, with its checks and balances, has made the federal government the chief bulwark against such discriminatory legislation, thanks to constitutional provisions in the shape of the fourteenth amendment and treaties which under the constitution are the "supreme law of the land." Again and again have federal treaties with foreign governments been successfully invoked, from the beginning of our history on, to override state discriminations against aliens, including such common law disabilities as made an alien incapable of owning land.

The anthropologist tells us that the formation of the tribe or race was a step in the progress of man, and that originally, each tribe or race protected only its own members, and viewed all outside of its fold not merely with suspicion, but with dislike and hatred. In the progress of civilization the laws were recast so as to remove racial discriminations, and to protect all classes. This progress was effected largely through treaties with particular countries, granting their citizens and subjects full rights, until nearly all civilized men became united together by such ties, and race discriminations became rare exceptions. In fact, our own country, above all, has been in the van in combatting race antagonisms. Says Professor Shaler in his extremely suggestive book, "The Neighbor:"⁵ "As soon as an ethnic society is organized, it takes on many of the characteristics of the primitive animal individual, it lives for itself alone. Other groups of like nature are its enemies to whom no faith of any kind is owed. To plunder them is not theft, to slay those who are of them is not murder, they are outside of the pale of all obligations whatever. . . . The most significant peculiarity of the American people, that which in my opinion sets them more apart from the rest of the world than any other, is the relative absence of the tribe-forming motive among them. While in Europe there is a general tendency to disbelieve in all men, even of the same race, who are not well known—a humor which is least, but still discernible in Great Britain, and increases to the lands about the Mediterranean—in the United States there is hardly more than a trace of this humor and that appears to be steadily lessening. In general, the American is characterized by an almost unreasonable belief in the likeness to himself of the neighbor, however far parted by race, speech or creed. This is so strong that even the Civil War did not

⁵ Pp. 42, 43-4.

shake it; it served rather to affirm the mutual confidence." Even Professor Shaler, however, notes certain exceptions to this tendency, notably in our attitude towards the negro, and to these should be added our anti-Chinese and anti-Japanese enactments.

As already indicated, the discriminations against aliens and particular alien races were originally removed chiefly by means of treaties with different foreign nations, but for most purposes, such treaties had become so general, prior to the organization of our country, that most of the common law disabilities had been regarded as removed, even independently of specific treaties, because of the growth of commerce and friendly relations between states. This circumstance is clearly indicated by such an early leading case as *Ormichund vs. Barker*,⁶ decided in 1775, where the right of a Gentoo residing in the East Indies to be sworn in an English lawsuit according to the ceremonies of his own religion, was sustained, despite early authorities to the contrary, because required by the modernized common law, which considers the requirements of an expanding foreign commerce. Despite Lord Coke's statement that "all infidels are in law perpetual enemies for between them, as with the devils, whose subjects they are, and the Christians, there is perpetual hostility and can be no peace," Justice Willes remarked: "But this notion, though advanced by so great a man, is, I think, contrary not only to the Scripture, but to common sense and common humanity. I think that even the devils themselves, whose subjects he says the heathens are, cannot have worse principles; and besides the irreligion of it, it is a most impolitic notion, and would at once destroy all that trade and commerce, from which this nation reaps such great benefits."

There was, however, an occasional disability on the part of aliens which survived, such as incapacity to own land, and this was removed as to most foreign nations by treaties which our government entered into from time to time. These treaties, as will be further seen hereafter, have also nullified numerous state laws and even constitutional provisions, which have been enacted from time to time, to curtail the rights and privileges of various races which happened to become unpopular for one reason or another, notably the Chinese. Many of the decisions of the Supreme Court of the United States and other tribunals

⁶ Willes Repts., 538. Compare the very able recent opinion of the New York Court of Appeals written by Judge Cullen in *Brink vs. Stratton*, 176 N. Y. 150, holding it to be a violation of the Constitution to ask a witness if he is an agnostic.

to this effect may be found collated in such works as Professor Moore's "Digest of International Law,"⁷ Butler's "The Treaty Power" and the numerous articles and treaties called forth by our recent Japanese separate school agitation, notably papers contained in the "Proceedings of the American Society of International Law at its First Annual Meeting, April 19 and 20, 1907." So common have treaties safeguarding rights of alien subjects become, that we have been compelled to insert in many treaties provisions according to subjects of particular countries all the rights of the most favored nation, with resulting complications with respect to particular "reciprocity" treaties or the like, which the courts have been compelled to hold granted special privileges for special considerations, and were not intended to be embraced by grants of all the "rights of the most favored nation."

But this particular form of "race legislation" scarcely falls within the scope of the present paper. Of course, our Supreme Court has held that our treaties cannot reasonably be construed as preventing the enactment of general statutes for the exclusion of alien paupers likely to become public charges or alien convicts or diseased persons.⁸ We have also, on occasion, made special provision in our treaties for the naturalization of aliens who are not covered by our general naturalization laws, for the latter were, curiously enough, limited to *white* persons originally, and the only other classes added thereto are persons of "African nativity or descent," so that the yellow races, including Chinese, Japanese, Burmese, Indians and others (but not the copper-colored native Mexicans), are generally regarded as incapacitated from naturalization,⁹ though this discrimination was doubtless intended originally only against Negroes and Indians in tribal organization.¹⁰ This item further indicates how indefinite and uncertain the meaning of some of this race discriminatory legislation is, in view of everchanging opinions as to anthropology and ethnic classification. Note, for instance, Professor Wigmore's scholarly article in the "American Law Review" (1894), "American Naturalization and the Japanese," denying that the Japanese are Mongolians, which would itself have disposed of the controversy on the California law for separate schools for Mongolians.

Reference has already been made to the fact that the leading excep-

⁷ Vol. IV, Sections 534-578.

⁸ The Japanese Immigrant Case, 189 U. S. 86.

⁹ Rev. St. U. S., Sec. 2169.

¹⁰ Compare paper by the writer on "Naturalization and the Color Line" in the "Journal of Am. Asiatic Association," February, 1907.

tions to our general policy against race discriminations in legislation have been furnished by the negro, the Chinese and the Japanese races. As regards the negro, we built up a mass of discriminations running counter to our English common law of the most far-reaching and serious character which it required the sacrifice of blood and treasure of the Civil War to overcome. Many of these discriminations may be conveniently studied in Hurd's "Law of Freedom and Bondage." The fourteenth amendment to the federal constitution had the effect of making the most serious of these null and void, not merely in favor of the negro, but in favor of other races and classes also.

Following in the wake of this amendment, civil rights bills were enacted by our federal congress and in several of the leading states of our country, affirmatively forbidding, under heavy penalties, discriminations on account of race or color, even in the use of inns, conveyances, theatres, etc., clearly indicating our national attitude towards such discriminations, even on the part of quasi-public agencies. But some of these federal provisions were declared unconstitutional as an encroachment upon state power,¹¹ though as state enactments they have been quite generally sustained in jurisdictions which enacted them.¹² Numerous state enactments, discriminating against certain races, particularly the three designated ones, have been held to be unconstitutional in state or federal courts because of the federal constitutional and treaty provisions referred to, or because violative of state constitutional provisions against special legislation and denials of equal protection of the law.

The fact remains, however, that a large number of statutory distinctions on race lines, particularly as applied to the negro, have been sustained, chiefly in southern states, on the theory that illegal "discriminations" are not involved, if equal but separate and distinct facilities for different races are afforded, with respect to street and railroad cars, steamships, restaurants, theatres, schools and the like. In justification of such enactments, applicable particularly to the negro, reference has been made to alleged differences in education, character, standing and habits of the two races, and fear of endan-

¹¹ The Civil Rights Cases, 109 U. S. 3.

¹² See *People vs. King*, 110 N. Y. 418; *Baylies vs. Curry*, 128 Ill. 287; *Commonw. vs. Sylvester*, 13 Allen (Mass.), 247; *Ferguson vs. Gies*, 82 Mich., 538; *Cyclopedia of Law and Procedure*, Vol. 7, p. 158, *et seq.*, "Civil Rights;" Vol. 8, p. 1073-4, *Constitutional Law*, "Equal Protection of Law"; *General vs. Special Acts*, Vol. 14, *Lawyers' Reports Annotated*, 583; 2 L. R. A. 577; 7: 194; 11: 492; 14: 566; 6: 621; 21: 789.

gering white man's control of our institutions and government, if any different course were pursued. The post-bellum cases are being analyzed and collated in an extremely interesting series of articles on "Race Distinctions in American Law," by G. T. Stephenson, in the "American Law Review," beginning with the January-February, 1909, issue, and one of them has also appeared recently in the "American Political Science Review" for May, 1909, entitled "The Separation of the Races in Public Conveyances." It is difficult, however, to escape the conclusion that they are inconsistent with the spirit of American government.

Our federal Chinese exclusion laws date from 1882 on, though we have had federal enactments against enforced, involuntary introduction of "coolies" from China, Japan or other Oriental countries from 1862 on.¹³ The decisions of the Supreme Court of the United States have repeatedly and emphatically recognized what was conceded in our diplomatic negotiations and in our legislative debates, that "it is the coming of Chinese laborers that the act is aimed against"¹⁴ merely, and the danger of competition from cheap coolie labor is the sole attempted justification for such laws requiring serious consideration.

Even in legislating for the exclusion of Chinese laborers, treaty faith and moral obligations required exemption of those who had *bona fide* come over in reliance upon the express provisions of the Burlingame Treaty of 1868 with China, whether laborers or non-laborers. By that treaty we had welcomed such immigration in express terms not paralleled in any convention with any other country, having even employed the opportunity to preach a text to China and the world concerning, to use the language of Article V, "the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantages of the free migration and emigration of their citizens and subjects, respectively, from one country to the other, for purposes of curiosity, of trade, or as permanent residents." We also guaranteed, in Article VI, to "Chinese subjects visiting or residing in the United States, the same privileges, immunities and exemptions in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation."

Exemption under the constitution also had to be made of persons of Chinese extraction born here. Alleged difficulties in the enforcement of these laws and attempted evasions thereof—scarcely sustained,

¹³ See Rev. Statutes U. S., Sections 2158 to 2164.

¹⁴ U. S. *vs.* Mrs. Gue Lim, 176 U. S. 459, 467.

however, by our official government census, which recorded 105,465 Chinese residents in 1880, 106,000 in 1890 and only 93,000 in 1900, with 70,000 the present official estimate of the Department of Commerce and Labor—led to legislation for the registration of all resident Chinese laborers, under heavy and previously unheard-of extra-constitutional penalties, and danger of arrest of all Chinese, on the claim that they should have registered, and stringent, often unobtainable, proof on the part of all non-laborers was demanded. The law was administered on the theory that only “teachers, students, merchants or travelers from curiosity” may enter. The exclusion of “bankers,” “traders,” physicians, actors, etc., because not affirmatively enumerated, was ordered. The determination by administrative officers of all applications to enter was made final, with no right of resort to the courts on the difficult and important questions of law and fact involved, even with respect to claims to American citizenship. Uncontradicted evidence was disregarded in a way not sustained in any other class of cases; arrest and detention and a shifting of the burden of proof upon defendants, wholly abhorrent to our Anglo-Saxon system of jurisprudence, was practiced and held to be constitutional, despite bills of rights, on the theory that the right to exclude and expel aliens may be pursued by extra-constitutional methods. In short, there was instituted a constant reign of terror for all Chinese or alleged Chinese residents, laborers or non-laborers. Their liberty is constantly jeopardized by harsh and oppressive laws, and their property is accordingly also endangered under the sentiment thereby engendered that they are beyond the protection of our laws. Only one who, like the writer, has become familiar in practice with the injustice and barbarity of these laws in their actual practical workings, can realize that such practices can exist amid our boasted American civilization. The Chinese have little access to our public prints and have substantially no votes, and when even their officials, vehemently but righteously decline to join in doing honor to a military officer who had made an unauthorized extension of these anti-Chinese enactments to our new Asiatic possession, to breed such race prejudice on that continent, too, they become *persona non grata*!

Mr. Bryce, in his “American Commonwealth,” published an interesting chapter entitled “Kearneyism in California,” in which he showed how the unfortunate Chinaman became a victim of political exigencies which enabled his economic rivals, or rather persons who were led by interested leaders to believe that they were his rivals, to “deliver”

control of the State of California to those who would most effectively discriminate against him. Already in 1855 and 1858 California passed laws to exclude Chinese immigrants, which its courts declared unconstitutional,¹⁵ and in 1878 the United States Supreme Court was compelled to declare unconstitutional a California statute, passed some years before, covertly aiming to exclude Chinese persons by state agencies,¹⁶ and both parties in the national election of that year demanded Chinese exclusion. Federal treaties and constitutional provisions annulled many hostile discriminatory state statutes and municipal ordinances, and it became obvious that federal legislation alone could accomplish this purpose.

President Hayes declined to yield to this clamor, in the absence of Chinese consent to a modification of the subsisting treaty, which would have been thereby violated, and vetoed a bill to restrict Chinese immigration for this reason on March 1, 1879.¹⁷ In his able veto message he said, even as to the time anterior to the Burlingame Treaty:—"Up to this time our uncovenanted hospitality to immigration, our fearless liberality of citizenship, our equal and comprehensive justice to all inhabitants, whether they abjured their foreign nationality or not, our civil freedom and our religious toleration had made all comers welcome," but, in the light of the new conditions, he pointed out that a remedy could properly be found only in the negotiation of a new treaty, to permit the restriction of Chinese immigration consonant with international faith. China was thereupon induced to enter into the treaty of 1880, by which she consented to measures by which the United States was permitted "to regulate, limit or suspend such coming (of Chinese laborers), but . . . not absolutely prohibit it," "the limitation or suspension shall be reasonable, and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitation."

Under authority of this treaty we passed our first Chinese exclusion act, dated May 6, 1882, after President Hayes, on April 4th of that year, had vetoed another bill which violated the treaty; but the agitation did not cease. In 1884, under cover of "protecting" non-laborers, we violated the treaty by prescribing a statutory certificate for non-laborers, which is difficult to obtain, will not suffice if the officials made it out incorrectly in any way, or did not also authen-

¹⁵ *People vs. Downer*, 7 Calif. 169.

¹⁶ *Chy Lung vs. Freeman*, 92 U. S. 275.

¹⁷ *Veto Messages of the Presidents*, p. 414.

ticate a translation, and may be demanded as exclusive method of proof at any time, under penalties of arrest and deportation. Soon the theory of exclusive enumeration of non-laborers in this treaty of 1880 was developed, to bar "traders," "bankers," "manufacturers," etc., on the theory that they are not non-laborers.

The violations of treaty effected by the act were carried still further by the act of October 1, 1888, which invalidated our official return certificates, armed with which Chinese laborers or alleged non-laborers had gone to visit China on business or pleasure, and also prevented Chinese wives or children from joining or rejoining husbands or fathers.

This was followed by the well-known "Geary Law," with its requirements for registration under heavy penalties, and extra-constitutional methods of expulsion in addition to exclusion. It authorized arrest without warrant or oath, by methods unconstitutional in all other cases, and shifted the burden of proof to the defendant, in violation of our whole Anglo-Saxon methods of jurisprudence. Then there came the act of November 3, 1893, giving an arbitrary and unjust definition of "merchant," and requiring white testimony, commonly impossible to secure, and proof of non-laboring by a "universal negative," which logicians teach us it is always impossible to establish. The act of 1894 made the decisions of the immigration officials—commonly ignorant, biased petty officials, acting as both advocates and judges—on the complicated questions of law and fact involved in applications for entry, whether right or wrong, non-reviewable in the courts, with the result that thousands of Chinese persons were unjustly dealt with, before the courts could decide some of these questions, in collateral proceedings, in their favor. Next the act of 1902 legalized the then subsisting situation as to the enforcement of these harsh laws in our insular possessions also.

The treaty with China of 1894, by which China is supposed to have consented to the Geary law provisions in a clause in unconscious irony describing them as passed for the benefit of Chinese laborers "with a view of affording them better protection," in return for authorization of return of Chinese laborers resident here, visiting China for brief periods under onerous condition, was terminated by China pursuant to its terms in 1904, making the violations of treaty faith guaranteed by the subsisting treaties of 1868 and 1880 worked by subsisting statutes, now still more glaring. As to the much-discussed exclusive enumeration theory of classes of non-laborers, who alone are permitted to enter, it is interesting to turn to the treaty

negotiations themselves and to the testimony of Chester Holcombe, secretary and interpreter to this very treaty commission, to learn that no such result was intended, and the decision of Judge Ross to the contrary¹⁸ in California in *U. S. vs. Ah Fawn*, 57 Fed. Rep. 591, approved by the Circuit Court of Appeals of that Circuit in *Lee Ah Yin vs. U. S.*, 116 Fed. Rep. 614, is of extremely doubtful correctness; the U. S. Supreme Court has never passed upon the question, and in fact seems to have thrown doubt on the correctness of the contention. (*U. S. vs. Mrs. Gue Lim*, 176 U. S. 459, 463.)

Both President Roosevelt and Secretary Straus have officially condemned the principle as unwise. Of course, however, both executive and law officers of the government find themselves compelled to follow these unreversed judicial decisions, especially in a matter having such important political bearings, even when against their own judgment. This circumstance accounts for much oppression in the enforcement of these laws.

It should, moreover, be remembered that even the Supreme Court is bound to enforce a statute, though it be clearly inconsistent with a prior treaty, despite our responsibility in the forum of international law and the resulting moral obliquity, and the court has several times contented itself with placing the responsibility where it belongs. One of the most serious consequences of such legislation is, moreover, the spirit it engenders of breach of national faith at the behest of supposed temporary expediency. Moreover, in making these laws peculiarly racial, by expressly making them applicable even to persons of Chinese extraction who are subjects of other nations,¹⁹ we have violated treaties with other countries as well, and run the risk of further international entanglements.

A reference in passing to recent statutes authorizing the expulsion, within three years after landing, of any aliens for alleged specified causes by mere administrative action, with right denied of judicial

¹⁸ Holcombe: "The Question of Chinese Exclusion," "Outlook," July 8, 1905, and "Coolies and Privileged Classes," by the present writer, in "Journal of Am. Asiatic Association," March, 1906; on the general question of Chinese Exclusion, see also the present writer's paper in the "New York Times," Nov. 24 and 25, 1901, reprinted in Senate Document No. 106, 57th Congress 1st Session; also his papers "Our Chinese Exclusion Policy and Trade Relations with China," "Journal Am. Asiatic Association," June, 1905, and July, 1905. See also Moore's "International Law Digest," Vol. IV, Sections 567-568; Butler's "The Treaty Power" and U. S. Senate Report and Testimony on Chinese Exclusion, No. 776, 57th Congress, 1st Session, 1902, as well as Letter from Minister Wu Ting Fang, printed as Senate Document No. 162, 57th Congress, 1st Session.

¹⁹ Sec. 15 of the act of July 5, 1884.

review, indicates how invidious is the atmosphere which engenders such legislation. It creates a dangerous condition for all aliens and alleged aliens, in placing their rights on an administrative footing inferior to those of citizens, contrary to the American spirit.²⁰ On the other hand, as regards Chinese residents, it should not be forgotten that the statutory discriminations against them and their testimony and their subjection to irresponsible petty executive officers, has created a spirit of disregard for their persons and property of a very far-reaching character, and has resulted in their often becoming the victims of official bribery and extortion, to which Oriental races may be peculiarly susceptible. This cannot be measured merely by the already appreciable number of convictions and dismissals of government officials for these causes, that happen to have taken place. It is but fair to say, in this connection, that there have been but comparatively few wholesale arrests of resident Chinese under our exclusion laws since the famous Boston raid of Sunday, October 11, 1902, when about 250 Chinese persons, in fact all the Chinese residents of Boston who could be found, were simultaneously arrested, nearly all to be subsequently discharged, after sustaining gross hardships and injuries. Hon. John W. Foster has ably described this contemporary imitation of the "Black Hole of Calcutta," and the large public meeting of protest in Faneuil Hall following it, in an article on "The Chinese Boycott," in the "Atlantic Monthly," January, 1906.

It was thought by the present writer that an account of the conditions created by these legislative race discriminations by one like himself, familiar with them for fifteen years might be more effective than any generalizations and abstract arguments.

Fortunately, the dangers from attempting to include the Japanese in these same special measures at the behest of a recently aroused anti-Japanese sentiment on the Pacific Coast have, for the time at least, been averted, by securing friendly action on the part of the Japanese government at home in the direction of preventing Japanese laborers from emigrating to the United States. This is accompanied by an enactment of general applicability, adopted February 20, 1907, for the exclusion of persons covered by Presidential proclamation, who are required by their own laws to secure passports to come to the United States. The reports of the Commissioner General of Immigration for the years ending June 30, 1907 (pp. 72-76),

²⁰ The Japanese Immigration Case, 189 U. S. 86, Justices Brewer and Peckham dissenting.

and June 30, 1908 (pp. 125-128), and of Secretary Straus for 1908 show how effective these regulations have been, not simply in excluding applying aliens of the class in question, but in preventing them from even applying or attempting to enter. In connection with proposed Japanese exclusion, Professor Royce's recent suggestive and ironical words are extremely apt:²¹ "The true lesson which Japan teaches us today is that it is somewhat hard to find out, by looking at the features of a man's face or at the color of his skin or even at the reports of travelers who visit his land, what it is of which his race is really capable. Perhaps the Japanese are not of the right race; but we now admit that so long as we judged them merely by their race and by mere appearance, we were judging them ignorantly and falsely. This, I say, has been to me a most interesting lesson in the fallibility of some of our race judgments." So, also, in his extremely interesting and suggestive paper, "The Causes of Race Superiority," included in the *Annals of the American Academy of Political and Social Science*, Vol. 18, 1901, Professor Edward A. Ross well said, before emphasizing the real elements of race superiority: "We Americans who have so often seen the children of underfed, stunted, scrub immigrants match the native American in brain and brawn, in wit and grit, ought to realize how much the superior effectiveness of the latter is due to social conditions."

To return, however, to the Chinese exclusion problem: It is apparent that the desire to exclude the Chinese laborer has worked incalculable harm both to them and to us, at least in excluding non-laborers and causing much unnecessary and unintended hardship. If cheap pauper labor, competing on unequal and unfair terms with American labor be involved, such labor can be excluded under general laws, not applicable to the Chinese merely, and not making exclusion the rule and a few enumerated classes of non-laborers the exception. It must be apparent, however, to justify even such reversal of our established beneficent and satisfactory American policy of a century and more, that the danger be general and continuous, and not temporary and spasmodic, and that it is one that cannot be cured by effective distribution, so as to deprive sections needing such labor badly, of the benefits to which they also are entitled. It should take reasonable form, and not be oppressive, unequal and confusing. Nor should it be dictated

²¹ Race Questions and Prejudices and Other American Problems, 1908, p. 14.

by spite and caprice, unworthy of a great state or nation, and designed merely to vex and annoy or to discriminate.²²

Fortunately, President Roosevelt, his Secretary of Commerce and Labor, Mr. Straus, and President Taft, while Secretary of War, have all expressed themselves emphatically on this subject in the direction of amelioration of our subsisting Chinese exclusion acts, and the substitution of general laws on the subject, and their utterances accord on this point with those of his Excellency Wu Ting Fang. In the course of an interesting address delivered by the last-named at Ann Arbor University more than eight years ago, the Chinese Minister well said: "The exclusion of Chinese is brought about, you are probably aware, by special and not by general laws. It is a discrimination against the people of a particular country. . . . If, however, it be considered advisable to legislate against the coming of laborers to this country, let such a law be made applicable to all Asiatics and Europeans as well as Chinese. . . . The Chinese immigration question is a complicated one. To solve it satisfactorily is not easy. It is necessary to look deeply into the subject, and not allow oneself to be swayed by prejudice and bias. Prejudice is the mother of mischief, and injustice, and all intelligent men should guard against it."²³ In any event, however, it is only the Chinese laborer that the laws are even intended to exclude, and the laws should obviously be recast so as to exclude merely this particular class and not the whole race, with only a few specified exceptions, making admission the rule, not the exception.

The Chinese boycott of 1905 against American goods called attention forcibly to China's deep resentment of our exclusion policy and of the serious injury it had wrought to our commerce and the imminent danger of reprisals. Our mercantile interests were therefore enabled to compel new and independent consideration of this policy on the

²² Note California's famous anti-queue law (*Ho Ah Kow vs. Nunon*, 5 Sawyer, 552); her anti-Chinese disinterment law (*In re Wong Yung Qay*, 2 Fed. Rep. 624); her special Chinese tax law (*Lee Ging vs. Washburn*, 20 California, 534), and constitutional prohibition of employment of Chinese by corporations (*In re Tiburcio Parrot*, 1 Fed. Rep. 481), and compulsory removal requirement to new sections (*In re Lee Sing*, 43 F. R. 359), and anti-Chinese-fishing law (*In re Ah Chong*, 2 Fed. Rep. 733).

²³ This address contains a very valuable discussion of the services rendered by the Chinese to America, and combats the economic arguments against Chinese exclusion. I quote it from a pamphlet entitled "Truth versus Fiction, Justice versus Prejudice," also reprinted in Senate Document No. 106, 57th Congress, 1st Session. See also his letter, Senate Document No. 162, 57th Congress, 1st Session, and also the able article by Ho Yow, late Chinese Consul-General at San Francisco, in the "North American Review," September, 1901.

part of President Roosevelt and his advisers. On July 24, 1905, President Roosevelt directed a vigorous letter to the State Department, requiring more humane treatment for the Chinese and caused the Department of Commerce and Labor to issue a circular to its subordinates to the same effect. The following October, in an address at Atlanta, he outlined his own policy in the matter, but pointed out that he cannot do all that should be done without action by Congress, action which has not yet been taken. In his message to Congress of December 5, 1905, he said: "In the effort to carry out the policy of excluding Chinese laborers, Chinese coolies, grave injustice and wrong have been done by this nation to the people of China and therefore ultimately to this nation itself. Chinese students, business and professional men of all kinds—not only merchants, but bankers, doctors, manufacturers, professors, travelers and the like—should be encouraged to come here and be treated on precisely the same footing that we treat students, business men, travelers and the like of other nations. Our laws and treaties should be framed, not so as to put these people in the excepted classes, but to state that we will admit all Chinese, except Chinese of the coolie class, Chinese skilled or unskilled laborers. . . . There would not be the least danger that any such provision would result in the relaxation of the law about laborers. These will, under all conditions, be kept out absolutely. But it will be more easy to see that both justice and courtesy are shown, as they ought to be shown, to other Chinese, if the law or treaty is framed as above suggested."

Secretary Taft was the first official spokesman of the Roosevelt administration to express similar views, on the occasion of an address at Miami University, Oxford, Ohio, on June 15, 1905. He stated that we cannot escape the charge of having broken Chinese treaty rights by our legislation. In the effort to catch in the meshes of the law every coolie laborer attempting illegally to enter the country, we necessarily expose to danger of contumely, insult, arrest and discomfort the merchants and students of China who have a right to come to this country under our treaties. We must continue to keep out the coolies, the laborers; but we should give the freest possible entry to merchants, travelers and students, and treat them with all courtesy and consideration. Two years after the boycott, Mr. Straus, in his first report as Secretary of Commerce and Labor for 1907, said even more specifically: "It has never been the purpose of the government, as would appear from its laws and treaties, to exclude persons of the Chinese race merely because they are Chinese, regardless of the class

to which they belong. . . . The real purpose of the government's policy is to exclude a particular and well-defined class, leaving other classes of Chinese, except as they, together with all other foreigners, may be included within the prohibitions of the general immigration laws, as free to come and go as the citizens or subjects of any other nation. As the laws are framed, however, it would appear that the purpose was rigidly to exclude persons of the Chinese race in general, and to admit only such persons of the race as fall within certain expressly stated exemptions—as if, in other words, exclusion was the rule, and admission the exception. I regard this feature of the present law as unnecessary and fraught with irritating consequences. . . . Laws so framed can only be regarded as involving a discrimination on account of race, and it is needless to point out that discriminations on account of race, color, previous condition or religion are alike opposed to the principles of the republic and to the spirit of its institutions.”

In his annual report as Secretary for 1908 he said: “The invidious distinctions, to use an apt phrase, now so apparent on comparing the treatment of necessity meted out to Chinese with the treatment accorded to aliens of other nationalities, in my judgment would not exist but for the fact that the subject of Chinese immigration is distinguished from all other immigration by being dealt with in a separate code of laws, involving a wholly distinct mode of procedure—a mode, moreover, which is at once cumbersome, exasperating, expensive and relatively inefficient. . . . Essentially the entire question involved in the admission or exclusion of Chinese is not a distinct and independent matter of legislative regulation, but in reality is merely a part of the larger problem of immigration.”

I cannot conclude better than to quote a stimulating passage recently written by Professor Royce, that distinguished psychologist and student of races, as to the dangers of race discrimination, in a paper on “Race Questions and Prejudices:” “Let an individual man alone, and he will feel antipathies for certain other human beings very much as any young child does—namely, quite capriciously—just as he will also feel all sorts of capricious likings for people. But train a man first to give names to his antipathies, and then to regard the antipathies thus named as sacred merely because they have a name, and then you get the phenomena of racial hatred, of religious hatred, of class hatred and so on indefinitely. Such trained hatreds are peculiarly pathetic and peculiarly deceitful, because they combine in such a subtle way the elemental vehemence of the hatred that a child may feel for a stranger, or a cat

for a dog, with the appearance of dignity and solemnity and even of duty which a name gives. Such antipathies will always play their part in human history. But what we can do about them is to try not to be fooled by them, not to take them too seriously because of their mere name. We can remember that they are childish phenomena in our lives, phenomena on a level with the dread of snakes or mice, phenomena that we share with the cats and with the dogs, not noble phenomena, but caprices of our complex nature."

IMMIGRATION AND RACIAL DISCRIMINATION*

We hear much nowadays about reading, or not reading, of Bible selections in the public schools, but a more serious inquiry is whether general reading of the Declaration of Independence there, and at other gatherings, has not been practically abolished. We are getting so far away from its opening declaration, that "all men are created equal," that it would seem as if such fundamental principle in our national history has become obsolete. In 1860, at the National Convention of the Republican party at which Abraham Lincoln was nominated for the presidency, the suggestion that this very passage be embodied in the party platform, in a campaign to recognize the rights even of the black man, was at first voted down, but George William Curtis, to whom that principle was sacred, offered the clause anew, daring—as his biographer tells us—

"the representatives of the party of freedom to reject the doctrine of the Declaration of Independence, affirming the equality and defining the rights of men,"

and the amendment was adopted with a shout of enthusiasm. The Civil War was fought on this issue, and at its culmination, our Constitution was amended so as to prohibit denial to any person within our jurisdiction of the "equal protection of the law," and even forbidding abridgment of the right to vote "on account of race, color or previous condition of servitude," and equal "Civil Rights Laws" were enacted, State and Federal. We need a new Curtis or a new Theodore Roosevelt, to cry a halt upon the extraordinary racial discrimination underlying the Immigration Law passed by Congress on May 26th, 1924. The name of Roosevelt is invoked in this connection, because—with particular reference to our immigration policy, he said, as late as 1906 in a famous Presidential message:

"We must treat with justice and good-will, all immigrants who come here under the law. Whether they are Catholic or Protestant, Jew or Gentile; whether they come from England or Germany, Russia, Japan or Italy, matters nothing. All we have a right to question is the man's conduct. If he is honest and upright in

* Address delivered before the "Judaicans" March 2, 1924, as revised in Dec. 1925.

his dealings with his neighbor and with the State, then he is entitled to respect and good treatment."

Instead of following such salutary principles, the Immigration Law of last year is based on a most extraordinary theory of relative race valuation and discrimination, making immigrants admissible merely in national categories, welcoming certain nationalities without limit, and practically excluding many others, and establishing national quotas, large or small as the case may be, for the majority. This system is not limited to a year or brief series of years, as the prior quota laws were, beginning in 1921, but is made permanent legislation.

I do not want to spend much time on detailing the complicated provisions of that law. It is well known that it establishes for Europe, and certain other sections of the globe, annual 2% quotas, based not even on the Census of 1910, as was the earlier Quota Act of 1921, but on the Census of 1890. The avowed purpose was to go back to a time *antedating* the large immigration of the so-called "new immigrants" from Southern and Eastern Europe, primarily the Italians and Greeks, Russians, Poles, Roumanians, Austro-Hungarians and Jews, and calculate the 2% of admissibles upon a census of foreign-born residents, in which those coming from Northern and Western Europe figured relatively much more largely than they did in later censuses, and do today. Not even wives and minor children of resident aliens not yet naturalized are taken out of quotas under this law, with the result that, unless Congress heeds Pres. Coolidge's repeated injunctions, for many years to come, hundreds of thousands of wives and children of recent immigrants, will be prevented from joining husband and father here. For purposes of comparison, it is best to compare the new quotas thus established with arrivals for the year ending June 30, 1914, the last year before the Great War, which has complicated immigration, as well as so many other things since then. In that year, there were 1,218,480 immigrant aliens, who came over here, nearly all from Europe. The new quota law cut this figure down to a total maximum of 164,000, to about 13%. While Great Britain is given a quota of 34,000 (or over 75% of arrivals of 1914), Germany of 51,000 (over 65% of arrivals of 1914), Ireland of 28,500 (over 84% of 1914 arrivals), yet Italy, for instance, is accorded a maximum of only 3845 (or about 1 3-10% of the 296,000 who came over in 1914), Greece is given a quota of 100 (compared to 45,800 of 1914), Poland is given a quota of 5982 (compared to 122,600 of 1914), Russia of 2248 (compared to 81,700 of 1914), and Roumania of 603

(compared to 24,070 of 1914). The maximum number of Jews thus admissible is difficult to determine, as the quotas are based upon *nationality* by birth, and not *race*, and the great majority come over as a portion of the quotas of Poland, Russia, Roumania and the former Austro-Hungarian states, but for the first year of the operation of the new Act, 10,292 Jews were admitted, indicating a maximum of about 10,000 per year, as compared with 138,051 Hebrew arrivals of 1914; or about $7\frac{1}{4}\%$. Instead of constituting about 11% of the total number of immigrants and non-immigrant alien arrivals as per the admissions of 1914, the number is now reduced to less than 3%. Even the preference that ought to be accorded to victims of persecution and to immediate members of a family seeking to rejoin each other again, particularly affecting Jewish immigrants, is wholly ignored. Poor Armenia—which suffered almost unparalleled atrocities during the past decade from religious and political persecution—is given a maximum quota of only 124, though even our laws recognized until now, the obligation civilization, and particularly the land of asylum for Puritan, Pilgrim, Huguenot and Quaker, owes to fugitives from religious persecution.

After July 1st, 1927, a new set of quotas are required to be established, fixing a maximum of 150,000 per year for all immigrant aliens, based on pseudo-scientific guess-work as to the supposed present relative racial race-stock of our country, beginning with an arbitrary speculation as to its constitution in 1790. The 1790 analysis is itself based on mere guess-work as to racial identity, judged by mere names, with every name omitted that did not occur at least 100 times. But in principle this is less offensive and insulting than the present quota figures are.

On the other hand, natives of the American countries north and south of us, are admissible without regard to any quota, with the result that an absolute majority of all immigrants admitted since the new law became effective, were Canadians and Mexicans. As regards persons not capable racially of being naturalized, Asiatics, roughly speaking, they are made wholly inadmissible, except ministers and professors and their wives and minor children, students, and merchants, it being denied by the Government even before our Supreme Court the other day, that there is any right for a resident Chinese or Japanese merchant to have his wife and minor children join him here at any time, and even that Court was constrained to hold, in view of the unambiguous legislation, that one of that race who is a U. S. citizen by birth,

may not have his foreign-born wife join him here. On the other hand, Africans and persons of African descent are in terms admissible. Such is, in outline, this extraordinary scheme of national and racial preferences, and attention has repeatedly been directed, even in Congress,—and of course, still more, privately—to the fact that the overwhelming majority of persons now excluded, of those that seek to enter, are Catholics and Jews. Though the act, of course, says nothing about any preference on religious lines, and cannot constitutionally—it is obvious that, intentionally or not, the very persons discriminated against by this quota system, based on a census of 35 years ago—are the two creeds whom the Ku Klux Klan attack as “undesirable,” even with pistol, knife and whip.

It is thus obvious that immigrants—despite Theodore Roosevelt’s reformulation of the American principle in 1906—are subjected to nationality tests, which we heretofore consistently deprecated as un-American, and not a subject of governmental concern at all. Moreover, instead of applying equal tests to various nationalities, if nationality tests we must have—it is apparent that certain nationalities are strongly preferred, while others are strongly discriminated against. The alleged theory of discrimination—or at least a factor in it—is supposed greater assimilative capacity and supposed superior value to us, of immigrants from Northern and Western Europe, the so-called “Nordics,” as compared with those coming from the Southern and Eastern sections of the same continent. The facts as to such greater assimilability are in dispute, and in truth we never had such potent and effective agencies for Americanization and assimilation in all our history as today, as our Jewish organizations’ admirable and pioneer Americanization work in particular indicates. But supposed greater assimilation is a proper subject-matter for consideration in connection with naturalization, and has already been taken into account there by our prior laws.

The only really comprehensive study of American naturalization in terms of race-stock that we have, was made by John P. Gavit in his work “Americans by Choice,” issued in 1922 in the “Americanization Studies” series provided by the Carnegie Corporation of New York. It shows, strangely enough, that the immigrants coming over here between the ages of 1 to 14 wait on the average until 6.2 years after attaining their majority before getting naturalized. Those coming over here between 15 and 20, wait on an average till 11 years after reaching 21, while those coming over after 21 wait, on an average, till 10½ years

after reaching majority. Of men naturalized, those waiting the briefest time after becoming qualified, are not the English, Germans, French and Canadians, but the Turks, Greeks, Irish, Russians, Roumanians and Hungarians greatly exceed them in such avidity, as do even the Italians. The explanation is that those coming from countries where there is autocratic government, or political discontent, or inferior economic opportunity, are more eager to become American citizens than those coming from governments relatively democratic, who are more content to retain the citizenship of their fatherland. The Canadians, whom we admit regardless of quota, are least eager to acquire American citizenship, waiting an average 16.4 years.

The immigrants coming over here are of great service to our country on numerous other grounds, however, besides admission to citizenship, and on the other hand, their prime purpose in coming over is in no case to become voters here, but to improve their economic, religious, and civil status in this new "land of promise," but judging merely from their economic value to us, even the non-Nordic stock is much more needed by us than the "Nordic." We need particularly the farmers and farm-laborers, unskilled laborers and domestic servants, who greatly predominate, relatively speaking, among the "new immigrants," but today, the farm laborers constitute only 10% of our immigration, compared to 24 8/10% of the year 1914, unskilled laborers constitute today only 10%, compared to the former 18 5/10%, and servants 8%, compared to 11 8/10%. And we particularly need the wives and minor children of resident aliens, to join them here, to establish real homes for them, and the school which the children attend is the chief medium of Americanization. Even holders of American viséd passports issued before the Act of 1924, after they had left their old homes on the faith of our visé and burnt all their bridges behind them, remain barred! One result has been the migration northward of hundreds of thousands of negroes, attempting to fill the role that the immigrant alien had been taking much better. But I may frankly admit that the war made it desirable temporarily somewhat further to limit immigration, in addition to the excluding force of the Act of 1917, which barred the great majority of the world by its scores of categories of excluded classes. But that concession does not justify such scheme of racial discrimination as we have enacted.

There is really nothing back of these racial restrictions other than chauvinistic ideas of supposed relative race values and race prejudices. If one turns to Jean Finot's able book on "Race Prejudice," or Oldham's

recent work "Christianity and the Race Problem" one finds an excellent analysis of the movement, which began with Count Gobineau's French work of 1854, on "The Inequality of Human Races," to dignify innate prejudice, by giving it scientific appearance and terminology. Not merely do no two authorities agree on the same classification of races, but even the same individual's characteristics are described by different writers, diversely, as indicating greater or less than average racial superiority. Gobineau's theories were subsequently seized upon with avidity by the anti-Semite, Houston Stewart Chamberlain, in Germany, with slight modifications, and have latterly found their way to our country in an American guise.

Even as far as the Ku Klux Klan has adopted anti-Semitism as a plank in its platform, it has merely extended, first to Roman Catholics, and now to Jews, the animus of the old movement against the negro, and of "Know-Nothingism." It is, however, a great mistake to accept Burton Hendrick's fallacious statement that the immigration restriction movement is primarily anti-Semitic. As President Eliot pointed out, some years ago, in our day it is principally anti-Catholic and in a larger view, it is merely a recrudescence of a feeling, as old as history, of suspicion and dislike against the stranger, not belonging to one's own clan or race. While anti-Semitism in our midst has taken up larger dimensions within the past few years than ever before—chiefly because of antagonism and reaction engendered by the war—this is really only a part of a much larger movement of racial discrimination, of which it is a phase, aggravated somewhat by religious, and possibly certain other differences. It is therefore a decided mistake to exaggerate its scope and significance, and overlook the fact that it is a phase of human psychology, as old as man. Even the term "Nordic," coined by a Frenchman, Deniker, was given substantial scope only by a native American, Madison Grant, in the flights of pure imagination, masquerading as race history, to be found in his recent book, "The Passing of the Great Race," and by Lothrop Stoddard's pseudo-science, and it was reserved for our native "Immigration Restriction League," and Henry Ford and his hirelings to carry the term into immigration propaganda.

Let us briefly trace to its origin this general phenomenon of racial discrimination. We all know that primitive man suspected and feared the stranger—a natural enough circumstance in days of incessant warfare, when the struggle for existence was so much keener than now. Commonly this dislike originally even took the form of cannibalism, with the stranger as the victim. Decent treatment of the alien began

at the behests of religion, when he was permitted to find refuge or asylum at the religious shrine or sacred place, where it was unseemly that human blood should be spilt. Almost every race in history, through the influence of religion, thus began to moderate the antagonism and blood-thirstiness of primitive man. I had occasion, some years ago, to trace this subject of the "Right of Asylum with Particular Reference to the Alien," historically, upon the basis of this religious sanction, in the form of a Phi Beta Kappa address, subsequently published in the "American Law Review," (1917) and somewhat further in a paper on "Un-American Character of Race Legislation," published by the American Academy of Political and Social Science, in 1909. My father, the Rev. Dr. K. Kohler, has called my attention to the circumstance that the Hebrew term for stranger, "Ger," etymologically denotes "protégé" or "client" of God, evidencing the protection acquired by the alien through religious injunction, and the Biblical "cities of refuge" in terms afforded asylum to the stranger, too. (Numbers XXXV, II.) It is primarily through the religious appeal that the rights of the stranger have developed, and despite occasional differences between precept and practice, we may proudly point to Biblical commandments as paving the way for racial equality. Thus Leviticus XV 34 reads: "The stranger that sojourneth with you shall be unto you as the home-born among you, and you shall love him as thyself, for ye were strangers in the land of Egypt." Again, to quote Exodus XII 49: "One law shall be to him that is home-born and unto the stranger that sojourneth among you." In an address by my father, delivered in 1893 at the Chicago World's Parliament of Religion on "Human Brotherhood as Taught by the Religions Based on the Bible," he emphasized not merely the civilizing influence of the acceptance by the world's three greatest religions of this corollary from the principle of the "Fatherhood of God," but also the potent humanizing and leveling effects of international commerce in developing inter-racial friendship, which religious differences in practice, as distinguished from precept, so often tended to retard or sever. In our own day, too, it is interesting to observe that the one conspicuous systematic universal effort to establish good relations between races, regardless even of color, emanated with Prof. Felix Adler, the originator of the important "First Universal Races Congress" that was held in London in July, 1911, and the papers read before which still constitute one of the most important volumes we have on the subject of race. So also, Oldham's above-cited "Christianity and the Race Problem"

(1924) was written under a commission from the Board of Christian Missions.

On the other hand, so little did Greece, and then Rome, heed these dictates, that attention was properly called by a talented American Jewish scholar, A. C. Bernheim, in his interesting "History of the Laws of Aliens" to the fact that the German word "*elend*" is supposed to have been derived from the miserable condition of the foreigner, called *elento*.

Passing however, over two thousand years to British history, we arrive at the supposedly ideal, Simon-pure, ultra-desirable best exemplar of the Nordic race, whom its inamoratos wish to have strongly predominate among our new immigrant arrivals. Let us hear what Sir Harry H. Johnston, who achieved almost equal greatness as explorer, administrator, writer and anthropologist, has to say regarding the British in this connection. Writing even in the midst of the war, in 1917, on "The Alien Question" in "After War Problems," that distinguished, unbiased, authority, said:

"In our own day, thousands of Germans and still more thousands of Russian, Polish and Roumanian Jews have come to England to seek peace, a respite from religious or civic persecution, and a livelihood . . . Prior to the outbreak of the lamentable war, if any British man of genius wanted to start a new venture that was literary or dramatic, the opening up of a new country, the carrying out of a brilliant invention in industry, in chemistry, in science generally, to whom did he turn? Usually to a German, and most often to a German Jew. Facts are facts, however they may be unwelcome at this and that stage of our national history. In short, the summing up of this historical survey is that throughout its known history, from the date of the existence of Piltdown Man to July, 1914, Britain and Ireland have not only received colonization from almost all types of the European peoples, but more than any other part of Europe, they have been enriched, stimulated, built up, into the most magnificent position that any nation has yet known in the history of the world by a succession of alien immigration. The literature of Shakespeare is virtually international; the English language is virtually international, as it has borrowed from more sources than any other example of European speech. British art and architecture are international. British science is international. We are really—we British people—the pick of Europe, because we have not shut out immigration, because we have welcomed new

comers and new ideas. Put no obstacle in the path of those who are likely to prove valuable citizens. Certainly not from any superstition as to the existence of any special British race or class; seeing that we are compacted of all European types, with a dash of the Asiatic and even of the African, and that *we* do not hesitate to plant ourselves in foreign countries."

Turning next to our own country, we find here the first great nation developed, out of much varied racial and religious types, which preserved in large degree their own peculiar and distinctive characteristics, while joining in a federation of democratic states under a written constitution, which protected the stranger as well as the citizen. "E pluribus unum." As George Bancroft, the historian, well said, many years ago: "The United States were severally colonized by men in origin, religious faith and purposes as varied as their climes. * * * For the entire thirteen colonies at the time of the Revolution, one-fifth of the population could not speak English, and one-half at least was not Anglo-Saxon by descent." Despite the dogmatic fallacy we so often hear repeated, as to our country having been founded by a homogeneous English Protestant stock, emanating from doctrinaires unfamiliar with our actual history, Bancroft's conclusion was confirmed by later investigations, including recent publication of the details of our first national census, and it has been accepted by our leading living ethnologists and statisticians. In fact, as early as 1747, it was estimated that three-fifths of the entire population of Pennsylvania were Germans, and already in 1718 fears were expressed that that colony would cease to be a British province, and its governor was compelled to veto a bill forbidding further immigration into Pennsylvania "because of its cruelty." Soon this became even more pronounced in the Carolinas and Georgia. Until the end of the 18th century, the bulk of the immigrants to the colonies were "white slaves" or "redemptioners," who had to redeem themselves by service in order to pay their passage money, such as we encountered in Mary Johnston's "To Have and To Hold," and who lived under conditions which made true assimilation almost impossible.

In one section of our country, however, almost from the start, the differing immigrant was not welcomed, and that was in New England, (with the exception of Rhode Island), and it will be remembered that near the beginning of its history, Massachusetts banished her most distinguished resident, Roger Williams, compelling him to found a new home based on the since sanctified American principle of religious

liberty. The pronounced extent to which some of the colonies, particularly those of New England, excluded immigrants on racial and religious lines, can be studied in Proper's "Colonial Immigration Laws." Fortunately for some of us, some of her classifications of debarable "undesirable citizens" have not been perpetuated, for colonial Connecticut, for example, barred all lawyers. The contrast between the attitude of the Yankee and of other inhabitants of our country towards the immigrant was forcibly expressed by Senator Maclay of Pennsylvania, as far back as 1790, when in a debate on our first Naturalization Act, he said: "We Pennsylvanians act as if we believed that God made of one blood all the families of the earth, but the eastern people seem to think he made none but New England folks." Unfortunately, in our own day, Pennsylvania's Senator Reed has become the leader in Congress in advocacy of racial discrimination, and triumphed over the Rhode Island chairman of his own committee, Senator Colt.

The prevailing attitude of our country towards the foreigner, however, and of opposition to racial and religious discriminations, was, as noted, emphasized in the Declaration of Independence. Such has been our fundamental American principle concerning racial discriminations against aliens, and when in days of imminent warfare, under New England influences, during John Adams' administration, we passed the "Alien and Sedition Acts of 1798," seriously jeopardizing the rights of resident aliens, the country's revulsion of feeling was so great, that Jefferson and Madison were enabled, on this very issue, to drive the Federalists from office. Under these conditions, Jefferson penned the famous rhetorical question contained in his Presidential Message of 1801, paraphrasing a plank from the platform of the year before, on which he had been elected: "Shall we refuse the unhappy fugitives from distress that hospitality, which the savages of the wilderness extended to our forefathers arriving in this land? Shall oppressed humanity find no asylum on this globe?" While it is, of course, true that this declaration summarized our national attitude towards immigration until our own day, it is not generally known that in an earlier draft of this same message, Jefferson had gone back to the "natural rights" principles of the Declaration of Independence, and added a passage enunciating a theory now discarded, and which passage he subsequently eliminated from the final document, reading: "Every man has a right to live somewhere on the earth, and if somewhere, no one society has a greater right than another, to exclude him."

Of course, throughout our history, certain wise-acres and doctrinaires

protested against our continuing to admit the aliens then predominatingly migrating to our shores, particularly the Irish and Germans, and predicted dire results from receiving such "vicious" and "non-assimilable" elements, but even the movement so graphically described by Prof. McMaster in his study of "The Riotous Career of the Know-Nothings" failed to modify our general policy.

Our treatment of the negro slave, however, was to put our American doctrine of opposition to racial discrimination to a severe test, but as a result of the Civil War, we not merely liberated the black slave, but even bestowed the franchise on millions of illiterate negroes unfamiliar with principles of political self-government, all in the cause of racial equality and antagonism to race discrimination.

Less liberal was our treatment of the Chinese, however, for at the insistence of the Pacific Coast, after Pres. Hayes had in 1879, vetoed as violative of treaty, a bill to exclude Chinese laborers, we negotiated a Chinese Laborer's Exclusion Treaty with China in 1880, on the basis of which we have since then gravely differentiated the treatment of the Chinese from that of other aliens at a time when our entire Chinese population was less than 106,000. Ostensibly, however, this legislative system was based upon treaty arrangement with an Asiatic power, though we thereby began to accustom ourselves to carrying admissibility of particular unpopular races of aliens into the political arena. When the Japanese became the unpopular victims of similar race prejudice along the Pacific Coast, President Roosevelt wisely, in 1906, negotiated the so-called "Gentlemen's Agreement" with Japan, by which Japan herself forbade the migration of her laborers to our shores. Almost without attention, the Immigration Law of 1917, in the midst of the War, created a "barred zone" for laborers from still other sections of Asia. When, however, an Emergency Immigration Quota Law first met with Congressional approval, in 1921, by reason of abnormal conditions and hysteria resulting from the War, President Wilson wisely vetoed the bill, as violative of fundamental American principles, and of treaty faith.

Meantime, however, soon after Pres. Roosevelt's famous message of 1906 had been penned, Congress appointed a national Immigration Commission, to study an immigration policy, and Senator Dillingham of Vermont became Chairman, and Senator Lodge of Massachusetts its most influential member. For practically the first time in our history, and from chauvinistic and political motives chiefly, a governmental commission conducted almost all its investigation in terms of race. It

evolved the distinction between the so-called "new immigrant" from Southern and Eastern Europe, who had come over in predominately large numbers after 1880, and the "old immigrant" from Northern and Western Europe, whom it is now fashionable to call of "Nordic" race. With practically no investigation into the enormous increase in the potency of the Americanizing and assimilating influences and agencies exerted upon the "new immigrant," or into the actual extent of what James Bryce ably called his "eager and willing assimilation," he was contrasted in this respect with mythical "old immigrants." As it was impossible to study the conditions of all foreign born or foreign stock, certain sections of the country were arbitrarily selected, where conditions were most unfavorable to him, and inferences on a percentage basis drawn, commonly based upon an infinitesimally small number of cases. The fact was disregarded that, necessarily, large percentages of recently arrived "new immigrants" were not here long enough to average up with the "old" in percentage naturalized, or who had become masters of our vernacular, and misleading relative percentages were widely circulated. The fact was ignored that the prudent immigrant,—coming over with scarcely any money, and forbidden by our contract labor laws to secure a position beforehand—if married, generally preceded wife and children, in order to be able to establish a home for them first, before sending for them, and the "new immigrant" was styled "a bird of passage," though the old immigrant had done substantially the same thing in his day. Even as it was, however, the Immigration Commission felt compelled—while classifying the Jewish immigrant with the "new immigration"—to concede that his characteristics were predominately those of the "old" (Vol. I, p. 181, 187). Shortly before the Immigration Commission began its investigations, Congress had stricken out a direction to investigate population in terms of race in the "Census Bill," and when representatives of our own faith objected before the Immigration Commission to injecting certain "religious or racial discriminations" into its investigations, Senator Lodge replied (Vol. 41, p. 269):

"The word 'race' was stricken out of the census bill. I think it was a great mistake. It makes the returns almost valueless."

Even as it was, however, wide-scaled investigation made by Prof. Franz Boas on behalf of the Immigration Commission, involving native-born Jewish and South Italian children in New York, showed how ephemeral and evanescent even the supposedly most tenacious racial characteristic, the shape of the skull, is, in our country, the long

skulls of the former growing decidedly shorter than their progenitors', even in the second generation, while the round skulls of the latter grow longer than their ancestors'. This is the result of environment, climate and food, causing even the so-called "cephalic-index" thereby governed, to approximate to that of the so-called native American stock. It is this "Index" which is the chief factor underlying theories of race classification, such as the so-called "Nordic" races differentiation from other races. This is the only large-scaled scientific investigation of race and environment ever made. Although the scheme of restricting immigration by national quotas, based on such numbers of residents, was submitted to the Immigration Commission, it was discarded in its recommendations in 1910, in favor of the Literacy Test, which finally was enacted in 1917. It is not without interest to note that this national quota scheme was first suggested by Rev. S. L. Gulick, a missionary who had resided in Japan for a long time, and evolved it, in order to avoid friction with the Orient. I had occasion to warn him about 15 years ago, that it would not solve the Japanese question, but it would cause untold mischief for other race groups, as well, and also serious injury to our country at large. Naturally, when one is embarked on a course of racial discrimination, the most unpopular races come off worst of all. The act of 1924 not merely gives Japan a purely nominal quota, but it bars Japanese of nearly all classes, by excluding persons racially not naturalizable, and starts a new course in our treatment of Oriental immigration by excluding permanently, even the wives of American citizens of Chinese and Japanese race, resident here.

Since Edmund Burke's day, it has become axiomatic that one cannot draw an indictment against a whole nation. Who are the nationalities primarily discriminated against on the score of racial inferiority? Greek immigration would really wholly stop, though every civilized being knows what the world owes to Greece in the fields of literature, science, art and democratic government. Italy is discriminated against, to whom civilization owes so much in the fields of government, law, literature, art, music and navigation, including the gift of the discoverer of the New World. Poland is, which saved all Europe from the Turks scarcely two centuries ago, and was once in the van in culture; Russia, which gave us in our own day a Tolstoi and a Turgeniev, and a Jewish Jean de Bloch, to inspire the Czar with Hague Convention plans for terminating warfare! And there are the Jews, whose contributions to the world of religion, of standards of righteous conduct, literature and commerce, can scarcely be overvalued. As said by Matthew Arnold

in his "Literature and Dogma": "Greece was the lifter-up to the nations of the banner of art and science, as Israel was the lifter-up of the banner of righteousness. Conduct, plain matter as it is, is six-eighths of life, while art and science are only two-eighths." More recently, in Cushing's charming newly published "Life of Sir William Osler," that distinguished scientist's address of 1914 on the "Jew in Medicine" is quoted, where he said:

"Modern civilization is the outcome of (these) two great movements of the mind of man, who today is ruled in heart and head by Israel and by Greece. From the one he has learned responsibility to a Supreme Being and the love of his neighbor, in which are embraced both the Law and the Prophets; from the other he has gathered the promise of Eden to have dominion over the earth in which he lives. Not that Israel is all heart, nor Greece all head, for in estimating the human value of the two races, intellect and science are found in Jerusalem and beauty and truth at Athens, but in different proportions."

After brilliantly summarizing the history of the Jew in medicine, he concluded:

"In the medical profession the Jews have a long and honorable record, and among no people is all that is best in our science and art more warmly appreciated; none in the community take more to heart the admonition of the son of Sirach—: 'Give place to the physician, let him not go from thee, for thou hast need of him'."

Not unmindful of the natural indignation of the "new immigrants" and their one-time mother countries at such offensive and humiliating relative race valuations, the House Committee on Immigration, in its report actually contended that the new immigrant "breeds racial hatreds, which should not exist in the United States," instead of recognizing that such un-American and vicious methods of treating him ought to be so characterized. Fortunately, our late Secretary of State, Judge Hughes, had the courage at least to try publicly to stem this tide, and the Federation of Protestant Churches was not unmindful of their obligations to inculcate in practice, the principles of the true "brotherhood of man." President Coolidge has also lately tried to stem this tide of racial discrimination, and this very month, the federal courts, with Judge Augustus N. Hand of New York as their spokesman, strongly condemned this whole point of view.

But such a festering sore as attempted governmental racial discrimination cannot be confined to immigration questions. Given a

habit of making relative racial evaluations, race prejudice and racial suspicion will rapidly spread into the most unexpected fields. But a year or two ago, the professor of social ethics at Harvard actually suggested the establishment of racial quotas for college admission, in line with a similar suggestion from Pres. Lowell, but fortunately the governing board of Harvard unanimously disapproved of such recalcitrancy to the Harvard traditions! No mere questions of restriction of immigration is involved in this departure from fundamental American principles. And the circumstance that some of us delude ourselves by invoking pseudo-scientific arguments in support of such tests, was never formulated more strikingly than by a distinguished Harvard professor, Josiah Royce, who, in writing on "Race Questions and Prejudices" as far back as 1908, well said:

"We are all prone to confuse the accidental with the essential,
* * * to use science to support most of our personal prejudice. * * *

Superiority is best known by good deeds and few boasts";
and he pointed out that we first permit our prejudices to give names and classifications to race distinctions, and then worship these fetishes, because we have given them scientific names and terminology. He concludes that

"Such trained hatreds are peculiarly pathetic and peculiarly deceitful, because they combine in such a subtle way, the elemental vehemence of the hatred that a child may feel for a stranger, or a cat for a dog, with the appearance of dignity and solemnity and even of duty which a name gives. But what we can do about them is to try not to be fooled by them, not to take them too seriously, because of their mere name."

The fathers of our republic established it avowedly and intentionally, on the basis of equality of rights, regardless of race and creed. In some sections of New England, moreover, the Old Testament was enacted into civil law, including its command: "One law shall be to him that is home-born and unto the stranger that sojourneth with you". Will the sober sense of the country permit us, while continuing to do lip-service to these fundamental principles, to substitute for them, a regime of absurd race discrimination and race segregation? That is the most important question raised by the Immigration law of 1924.

JEWISH IMMIGRANTS*

The Immigration Question in the United States has of late assumed a very serious character. On the one hand, administration of subsisting laws has become ever harsher, the climax being now upon us. On the other hand, the report of the national "Immigration Commission," appointed pursuant to the act of Congress of 1907, was submitted last December, and considers and tentatively recommends legislation of a drastic character. We must recognize that we are in the midst of a new "Know Nothing Era," and only a campaign of education can safeguard the best interests of the country and maintain the "Open Door" to continued national prosperity.

While proposed new legislation involves questions of national policy as to which men may differ, there is no room for difference on the proposition that subsisting laws should be fairly and reasonably enforced, and that no man, not even the poor fugitive from Russian oppression and hatred, should be deprived of a fair and just hearing and determination upon his right to enter. Nay, more, in the light of fundamental principles of American jurisprudence, our immigration laws, like all laws in restraint of individual liberty, ever since the days of Magna Charta, should be even liberally construed, in protection of individual liberty, especially as compulsory deportation within three years after entry is permitted by law. In view of the importance of this branch of our subject, it will be taken up first, with merely the prefatory remark that even the "Immigration Commission," in its "Brief Statement of Conclusions and Recommendations" (pp. 24-5) has reported that "in justice to the immigrant and to the country as well, the character of these boards (of special inquiry) should be improved. They should be composed of men whose ability and training fit them for the judicial functions performed," and the Commission has put its finger on the real basis for the weakness of these boards, in saying that "the fact that they are selected by the commissioner of immigration at the ports where they serve, tends to impair the judicial character of the board and to influence its members in a greater or less degree to reflect in their decisions the attitude of the commissioner in deter-

* Discussion with Hon. Charles Nagel, Secretary of Commerce and Labor, at the 22d Council of Union of American Hebrew Congregations, New York, January 18, 1911.

mining the cases." In fact, until June 1, 1909, our statutes were reasonably clear and fairly well understood by inspectors and immigrants, and the attempt by administrative interpretation to *change* the law is responsible for the plight of inspector and immigrant. It was due chiefly to the efforts of the Board of Delegates, acting in connection with the American Jewish Committee and the I. O. B. B., that these facts were called to the attention of the Commission.

With respect to enforcement of our immigration laws, as in all other respects, the Jews of the United States want our laws enforced. We do not want aliens to be admitted, of any race or creed, suffering from loathsome or contagious diseases, mentally or morally defective, contract laborers or paupers, or persons likely to become public charges in fact. Besides our general interest as citizens in the welfare of our beloved country, we realize that we Jews ourselves will become the chief sufferers, if such properly debarred aliens of our own faith are permitted to enter. Jews becoming public charges make their demands mainly upon the charitable of their own race, and it is our proud boast that the Jews of the United States honor these demands, though commonly ignorant of the fact that American Jewry pledged itself to do so in 1655, as a condition for Jewish settlement in New Amsterdam. But in turn we demand justice for all, and particularly for our unfortunate co-religionists, whose disgraceful persecutions at the hands of Russia and Roumania is the greatest blot upon our boasted civilization today. We do not forget the welcome this beloved land extended to us or our forefathers, and we claim that the Jew has made every effort to show himself a worthy citizen. We know that similar opportunities will not be abused by our co-religionists from Russia and Roumania, and that their coming, under reasonable conditions, will enure to the benefit of our country, as well as to these poor fugitives from oppression and persecution. Hence, we are, and should be, aroused by the remarkable conditions now confronting us.

In the very able report of Hon. Simon Wolf, Chairman of the Board of Delegates of this organization—who has been for many decades the best friend the poor Jewish immigrant has—valuable statistical information is given as to Jewish admissions and exclusions, which I shall not attempt to repeat here. Let me therefore content myself by merely pointing out that the percentage of Jewish exclusions to Jewish admissions has increased as follows during late years: During the fiscal year ending June 30, 1907, it was 84-100 of 1 per cent; for 1908 it was 65-100 of 1 per cent; for 1909 it was 1.06 per cent, and it has now

increased, for the past fiscal year, to 1.86 per cent, three times as great as in 1908; 1,567 Jews having been excluded this year out of an army of 24,270 debarred of all races. During the past few weeks, even these figures have greatly increased. In December, 1910, the percentage of Jewish exclusions at Ellis Island was 3.2 per cent, with 134 detained cases undecided. The general percentage of exclusions is even greater, having been during the past year 2.32 per cent of exclusions to admissions of all races, showing that the Jews constitute a noticeably better class of immigrants than the average. In these figures an appreciable number of deportations after admission are not included, amounting to 232 during the past fiscal year; 77 per cent of all our immigrants land at Ellis Island. Jews do not fare worse than immigrants of other races, but all are apt to become victims of unjust administration of the law, with the consequences of deportation aggravated a thousand fold for the poor Russian and Roumanian Jews, because of their inhuman treatment in those benighted countries.

The number of alien Jews who came over here during the past year was 84,260, or 8.08 per cent of the total alien immigration. In fact, during this period, the grade of immigrants, measured by the *requirements* of the law, has not deteriorated. In connection with these figures, it should be remembered that an ever increasing number of prospective immigrants are barred abroad from sailing for the United States in consequence of medical examinations conducted there by the steamship companies; the Immigration Commission itself reports that about four times as many aliens are refused passage abroad each year by the steamship companies on medical grounds, after paying for their tickets in whole or in part, as are excluded here for all grounds annually, the steamship companies seeking to avoid the penalties imposed for bringing aliens over, discernibly suffering from loathsome, dangerous or contagious diseases, but not being obliged to investigate as to other grounds for exclusion. The recognition of these suggestive figures is itself of importance, the practice actually having grown up among certain restrictionists of "trying and condemning" the Department of Commerce and Labor for incompetency, in the event of its failing to maintain or increase earlier percentages of exclusions here, without reference, of course, to such increasing numbers of exclusions effected abroad. As regards the Jewish exclusions of the past year, 1,057, more than two-thirds, took place on the score of "likelihood to become a public charge," and this number has been constantly increasing, because of ever newer misconstructions of the law furtively forced upon inspectors at Ellis

Island, day by day, breaking down their judicial attitude, and creating an atmosphere of uncertainty and anarchy and cowed timidity.

As to the exclusions on moral grounds, we Jews have an enviable record. There were only twelve Jewish criminals excluded during the past year out of five hundred and eighty of all races, only eleven prostitutes out of three hundred and sixteen of all races and five procurers out of one hundred and seventy-nine of all races, despite unwarranted charges concerning Jewish participation in the so-called "White Slave Traffic." The writer has had occasion to examine the records of individual exclusions from time to time, and last March—when able arguments against further restriction were made by Messrs. Wolf, Sulzberger, Marshall, Elkus, Cutler and Sanders—called the attention of the House Committee on Immigration to the fact that he found from 15 per cent to 25 per cent of Jewish exclusions for the preceding months unjustified, by the authoritative judicial constructions placed by the courts on these words "likely to become a public charge," and members of the Committee could not believe, upon examining the individual records, that such exclusions had taken place, and even been affirmed upon appeal! Examinations of records since then show that the percentage of unwarranted exclusions is daily increasing. While the large majority of immigrants are in fact still admitted, no one can tell who will next become a victim of a blundering administration of the law. Nor do people often realize how much bitterness and antagonism is engendered among relatives of such unfortunates by such unjustified exclusions, to say nothing of the wreck of hopes as well as fortune for the poor returned immigrant.

The Immigration Commission points out that the fact that nearly 50 per cent of the appeals from exclusions taken to the Secretary of Commerce and Labor are sustained, proves inefficiency of administration below, and that similar blunders must take place in cases not appealed. In fact, however, despite the desire of the Secretary and the Assistant Secretary to do justice to the immigrant, a large number of appeals are improperly overruled, as well, since adequate machinery for hearing them is not existent, and because the presumption of the correctness of a decision appealed from, largely obtains, especially as the officials on appeal realize that they do not themselves see the immigrants and their witnesses, and the Commissioner commonly recommends affirmance, and because of the astonishing ground for denying justice in individual cases evolved by the restrictionists, that admissions on appeal should be discountenanced, because tending to weaken the admin-

istration of the law in other cases. (Prescott F. Hall on "Immigration," p. 296). But the difficulty is greater than this, a peculiar combination of circumstances has destroyed standards and principles of construction in the practical administration of our immigration laws.

That "our Government is a Government of Laws and not of Men!" is a fundamental principle, handed down to us from Revolutionary days, which our Supreme Court has often strongly emphasized. In an able article bearing this very title, published in a current monthly (*North American Review*, January, 1911), Mr. Justice Lurton points out the grave dangers confronting us by a disregard of this principle, and asks: "Which shall it be, a government of law or a government of men? As the alternative to a government of laws is a despotism, whether the despots be many or one, benevolent or malignant, the question admits of but one answer." Can we afford to ignore this national policy in our immigration laws? We have made decisions under our immigration laws, non-reviewable in the courts, though the rights and fortunes of well-nigh a million persons a year are involved. Originally, we had some judicial decisions, defining these terms of our laws, to guide us. Until the Immigration Bureau was transferred from the Treasury Department to the newly created Department of Commerce and Labor, digests of decisions of the Courts and of the Department were printed in pamphlet form (the last one eleven years ago!) and weekly as rendered, and the employees of the Immigration Bureau were engaged in enforcing the law as thus interpreted for them by the courts and in publicly rendered authoritative decisions of the heads of the Department, which enabled friends of immigrants also to advise them intelligently whether they have a right to enter. There was some relationship between law and administration, and, though judicial review ceased, law and order nevertheless prevailed, instead of anarchy and caprice. With the advent, within the past two years, of one or two opinionated doctrinaires into office, all this has been changed. Their own narrow and erroneous opinions and beliefs of what is best for the country have been substituted for law, and conditions of despotism have been built up, the extent of which Secretary Nagel and Assistant Secretary Cable themselves cannot realize. Erroneous theories and opinions, carelessly phrased and commonly hidden from the light of day even, are laid down as authoritative, and failure on the part of subordinates to adopt these in practice is treated as incapacity, and promptly punished with removal, degradation or reproof. Scores of removals and demotions took place, familiarizing the employes of the department with the penalties for dar-

ing to remain independent and conscientious judges. Every little while, new conflicting theories of construction are now developed, and as object-lessons, wholesale exclusions of the poor unfortunates take place, who have come over in ignorance of the latest theories of these official doctrinaires. Instead of enforcing the law—as understood by the law-makers who drafted it, and the courts and the authorities who first promulgated it—immigrant inspectors seek now—almost to a man—to reach the results which their superior requires, or rather, which they think he requires, under penalty of removal. Inspectors know merely that they are expected to exclude with great frequency, and follow their prejudices and caprices and new dogmas in hitting upon their victims; they know that they themselves will be the sufferers, if they do not. More than two-thirds of the appeals taken in November, 1910, from Jewish exclusions at the port of New York by the Hebrew Sheltering and Immigrant Aid Society were sustained.

Naturally enough, under these conditions, the vague and indefinite phrase, "likelihood to become a public charge," has become the ground for most of the unwarranted exclusions. Originally, as defined by the courts and intended by Congress, those words were construed as barring only persons under affirmative physical disabilities, preventing their earning a living, and it was repeatedly held, both by the courts and the head of the Treasury Department, that possession of cash on arrival was not necessary on the part of healthy aliens having relatives or friends here, ready to aid them. In 1907 Congress was asked to establish a \$25 cash qualification on entrance, but refused, but a new, self-constituted, law-maker arose in June, 1909, in the person of the Commissioner at Ellis Island, who reversed Congress, and ordained that in most cases \$25 was necessary, no matter what relatives and friends the immigrant might have here. When objection was taken to the usurpation of such legislative authority by an administrative official, the circular itself was withdrawn, but non-observance of its principles became "incapacity" and "insubordination," on the part of all subordinates. The new and even more dangerous doctrine was simultaneously promulgated, that proffers of assistance after arrival in finding work and caring for immigrants meantime, were to be disregarded on the issue of "likelihood to become a public charge," unless extended by persons legally obligated to support the alien, such as husband to wife, parent to minor child.

The present critical conditions are promoted through the evolution of still newer complicating doctrines. We are now told that the inspectors

are to decide, not merely whether the alien himself is likely to become a public charge here, but whether his family in Russia is, whom he has left abroad until he has been enabled to establish a home for them here, and also whether they, or any of them, are *for any reason* on any doctrine of probabilities, likely to be excludable if they should in the future come over here; all these matters are to be considered at the time that the head of the family himself comes over, and by often ignorant, coerced inspectors, unfamiliar with conditions abroad, and incapable of questioning intelligently as to such difficult matters, which are wholly beyond their ken. This is being done, moreover, on the theory of "avoiding hardship attending the separation of families." Instead of continuing the time-honored method, which has worked well in hundreds of thousands of cases among Russian Jewish immigrants and others, of permitting the male head of the family to find employment and build a home here, and save enough to send for his family, he is now likely to be excluded on entry because of uncertainties on these points, unless he brings his family with him at once, in which event, the chances of becoming public charges will be enormously increased, and the probabilities are that the whole family will be *properly* excluded on that ground, or will be so handicapped after arrival that they will in fact become public charges or charges on private charity. However good and humane the purpose may be which underlies this new principle, it is bound, in practice, to create hardship and injustice.

So also the practice has now been developed of holding inquiries before the "Boards of Special Inquiry" prior to the arrival of witnesses for the alien, and at which, accordingly, he alone testifies. At the conclusion of his testimony, contrary to law, as his case is really not concluded—his exclusion is often ordered, and if, when witnesses arrive, the case is re-opened in the discretion of the Commissioner, it is often either disposed of on the avowed ground that it has already been prejudged upon the basis of his testimony alone, or because ordering admission of an alien previously excluded would be dangerous for the inspectors, as tending towards "insubordination" or "incapacity." To aggravate such conditions, obstacles are placed in the way of aliens promptly communicating with or sending for their relatives as witnesses or advisers, instead of encouraging them to do so, and advising them of this fundamental right, and hearings are often conducted so as to bring out only matters adverse to the alien, who is uniformly deprived of counsel, until appeal taken, and ignorant of his rights and even of our language and procedure. The Immigration Commission has properly

demanding that these hearings be public hereafter, though nothing in the present law, as authoritatively construed, denies counsel to the immigrant. On the other hand, deportation even now often takes place before witnesses arrive and appeals can be taken, and it has become common to delay decisions on appeals until immediately before deportation, cutting off opportunities for judicial review, and often even, to see relatives and secure funds or comforts for the sad return journey. Even the right to appeal is now being jeopardized by a new regulation, making its allowance discretionary merely, despite the statutory mandate, when not taken till forty-eight hours before the vessel sails, though decisions and the arrival of witnesses from a distance may not occur till later.

The clumsily worded "assisted immigrant or prepaid ticket" provision, and blunders in construing it, add greatly to the number of unwarranted exclusions, though the framers of the provision emphasized the fact that possession of relatives or friends here, ready thus to aid the immigrant makes him all the more valuable.

Despite the fact that deportation within three years after entry is authorized, so as to get rid easily of persons who have actually become public charges, the law is enforced daily more harshly on application for admission. So, also, the medical examinations have become more rigid, to include, for instance, such items as alleged "three pounds underweight," and, under prevailing demoralization, boards of special inquiry are actually coerced into applying these certificates to vocations of immigrants and their families, upon which they have absolutely no bearing, as indicating "likelihood to become public charges," the physicians not having had the evidence before them of the immigrant's occupation. This works particular hardship upon the Russian Jew, with his deceptive appearance of slight physique, particularly at the end of abnormal conditions attending living in the badly conducted steerage, after being deprived of appropriate food, because of observance of the Jewish dietary laws.

The provision of the law authorizing admission under bond is rendered practically nugatory in general by an arbitrary refusal on the part of those acting in the name of the Secretary of Commerce and Labor to accept bonds, except to prevent separations of families, though this expedient would amply protect both the Government and the immigrants under a wise administration.

The above, now slightly amplified to meet changed conditions of the past few weeks, are some of the evils in the administration of our

immigration laws which have been brought in printed form to the attention of Congress, the Immigration Commission and the Department of Commerce and Labor by representatives of the American Jewish Committee and the Board of Delegates of the Union of American Hebrew Congregations and other Jewish organizations. Their importance and need should be further emphasized in appropriate ways. We should return to an administration of law which all who run may read. Nearly all these abuses can be eliminated without any change of subsisting law. In view of conditions in Russia, deportation of Jews, of course, causes a degree of hardship and ruin not approached by any other classes of exclusions.

II.

The Board of Delegates have also vigorously opposed, in conjunction with others, various recommendations to make the immigrant laws still more drastic. The chief of these proposed amendments, as outlined by the Immigration Commission, are to require as tests of admission, ability to read or write in some language, the exclusion of unskilled laborers unaccompanied by wives or families, increases of head-tax and amount of money in possession of immigrants, with gradations in favor of families coming over here together, limitation of numbers of each race to an arbitrary percentage for each year, limitation of numbers of aliens annually admissible at any port, and exaction of certificates of good character from certain countries of origin. The chief reasons for these proposed restrictions are the supposed lower standards of immigrants now arriving, coming today chiefly from Italy, Austria and Russia; their supposed disposition to return to their original homes, where they leave their families, and supposed unwillingness to become Americanized; the supposed unfavorable effects upon wages, though the Commission's investigations show affirmatively that wages have not decreased; and the evils of congestion in large cities. As applied to Jewish immigrants, these grounds are substantially all fallacious.

The Immigration Commission reports that there is an oversupply of unskilled labor in certain industries, and that, accordingly, the restriction hereafter of immigration of unskilled labor is advisable. No particular method of reaching this result is specifically approved of, though a majority recommends that the imposition of an educational test is the best single method available. The most remarkable fact about this "Brief Statement of Conclusions and Recommendations" is that there is a total failure to elicit facts, even from the Commission's own

one-sided investigations, justifying its conclusions. Its "field investigations" were made chiefly in 1908, in the midst of the abnormal conditions of the panic; but even then, in the industry it selected as most strongly indicating oversupply, the untypical bituminous coal mines of western Pennsylvania (pp. 30-31), it was obliged to find expressly that wages had not decreased. On the contrary, the annual report of the Secretary of Commerce and Labor, sent to Congress simultaneously, records the fact that the "Division of Information" of the Department finds an increase in the scale of wages both for farm hands and unskilled laborers, \$5.00 per month during the past fiscal year! The density of population of the United States mainland, according to the census of 1900—not greatly increased since—was only 25.6 persons per square mile. Comparing these figures with Netherland's average of 359 inhabitants per square mile, Great Britain's 311, Germany's 234, France's 187, and China's 259, we realize the correctness of the conclusion of Edward Atkinson, the distinguished economist (*Forum*, May 1892), that we have "incalculable room for immigrants." As to density of population of great cities, while New York City averaged 20 persons per acre in 1908, according to the "Encyclopedia of Social Reform," and Chicago 17, London averaged 61, Paris 142 and Berlin 130. The Borough of Manhattan, however, averages about 171 persons per acre today.

The Immigration Commission's underlying assumption that there is an oversupply of unskilled labor is wholly unjustified and unwarranted. That immigration has done incalculable good for this country, and that we owe to the immigrant a large degree of our prosperity and many of our best citizens, is axiomatic. Only a few years ago former Attorney-General Bonaparte well said:

"Our country owes to immigration its existence, and its existence as a great nation. It is, to my mind, little less than a crime for one who is an American—because he or his ancestor was an immigrant, and every white man is in such a case—to seek to shut out any immigrant who seeks to become, and who can become, a true American."

Washington, Jefferson and Lincoln urged the affirmative promotion of immigration to this country. Already in the Federal Constitutional Convention of 1787, James Wilson, subsequently justice of the Supreme Court, declared that Pennsylvania was a proof of the advantages of encouraging immigration, that nearly all the general officers of that State that served in the Revolution were foreigners, that three of her delegates to that convention were foreigners, including the illustrious

Robert Morris and himself, and other States had such brilliant foreign-born representatives as Alexander Hamilton. Even in that convention, however, an agitation against foreigners was perceptible, and ever since we have had precisely the same arguments that we are now familiar with, only then they were leveled chiefly against the Irish and the Germans. Our present-day restrictionists, even on the Immigration Commission, seek to enlist the support of the formerly proscribed races—now powerful—however, by telling us that the class of immigrants coming over today is a different one than formerly, that today 81 per cent. of the immigrants come from southern and eastern Europe, which twenty-five years earlier furnished only 12.9 per cent. of our immigration, and that this new immigration cannot be so easily assimilated, and has not the same “race values” for us. We had been familiarized with these arguments when first advanced by the “Immigration Restriction League” of Boston, and heard them re-echoed by some labor union leaders and by one or two immigration officials. First of all, our experience shows that, though formerly relatively small, our immigration from these countries has in fact been readily assimilated, and has contributed greatly to our national prosperity. It is well, occasionally to remind such doctrinaires that an Italian named Christopher Columbus, with a South European crew, paved the way even for Anglo-Saxon ancestors to come to this land of promise, and that already in our Revolutionary War, Kosciuszko and Pulaski attested to their love of liberty in a trying hour, as did also the Polish Jew, Haym Salomon, the associate of Robert Morris and friend of Wilson and Madison. We have had appreciable number of Italians, Slavs, Austrians and Jews here since the organization of our government, and they have proved valuable citizens, and are now directing their compatriots in the same channels, as the latter are arriving in larger numbers in our own day, and we need not, *a priori*, speculate as to their assimilability and race value.

Secondly, it should never be forgotten that a machinery for the Americanization and assimilation of these foreign elements has been established in our day, heretofore unheard of, and which hastens this process beyond anything available to the immigrant of former days. In the matter of education in the three R’s, in civics and patriotism and self-government, in acquisition of American habits of life and enjoyment of American standards of wages and conditions of labor, we live in a new era of progress. The immigrants who do not feel these new conditions are numerically almost negligible. When, in 1891, the

Baron de Hirsch Fund sought to interest the Board of Education of the city of New York in the establishment of special immigrant classes, its appeal was futile; today it is in a position to discontinue these classes after thousands had profited by them at the Educational Alliance, because the city itself now deems it appropriate to maintain such classes for all races and creeds. Schools, elementary and industrial, cannot be built fast enough to answer the demands for education of Italian and Jewish children, and night classes for adults, even in the summer heat, are called into existence. Classes and lectures in civics and history are everywhere popular among the immigrants, and our public libraries find their largest numbers of readers among them. State and Federal commissioners of labor, labor unions, counting thousands of foreign-born members, as well as the press, maintain our high standard of wages and promote Americanization. Federal and State bureaus of information for laborers, employment bureaus, improved transit facilities and such organizations as the Industrial Removal Office, the Galveston Committee, the Agricultural and Industrial Aid Society, the Hebrew Sheltering and Immigrant Aid Society, and hundreds of similar organizations, do effective work in Americanizing the immigrant, finding employment for him at good wages, overcoming tendencies toward congestion, and effecting distribution and promoting acquisition of American standards of living and thinking. In fact, the assimilative process to-day, even among the newer race stock in question, is quicker than it was among what the Immigration Commission calls the "old immigration." The keen and observant eye of James Bryce pointed out this important factor in his suggestive chapter entitled "The Latest Phase of Immigration," in his newly written edition of "The American Commonwealth," at the very time that our Immigration Commission ignored it. He well says (II, p. 488) :

"The point in which the present case of race fusion most differs from all preceding cases is in the immense assimilative potency of the environment. . . . The effigy and device, so to speak, which the American die impresses on every kind of metal placed beneath its stamp, is sharp and clear. The schools, the newspapers, the political institutions, the methods of business, the social usages, the general spirit in which things are done, all grasp and mould and remake a newcomer from the first day of his arrival, and turn him out an American far more quickly and more completely than the like influences transform a stranger into a citizen of any other country. . . . These things strengthen the assimilative force of American civilization, because here the ties

that held the stranger to the land of his birth are quickly broken and soon forgotten. His transformation is all the swifter and more thorough because it is a willing transformation."

One also feels tempted to quote Mr. Bryce's masterly affirmative answer to the question whether the new immigrants will be "good Americans" (II, p. 482); his demonstration of the fact that nearly all the "instreaming races are equal in intelligence to its present inhabitants," and that a blending of races tends to stimulate intellectual fertility, and that the Jews, Poles and Italians are likely "to carry the creative power of the country to a higher level of production" than it has yet reached (II, pp. 482-3), and that "to-day most of the hard, rough toil of the country is everywhere done by recent immigrants from central or southern Europe. . . . The Irish and the urban part of the German population have risen in the scale, and no longer form the bottom stratum."

That brings us, thirdly, to the fact that the manual labor of these very immigrants from southern and eastern Europe is absolutely essential for us to-day. They build our railroads and edifices, and do our mining, and no other class now here or coming over is willing to-day to do such menial labor. It is absurd to expect hard manual labor of this kind to be rendered by more literate persons, to whom other vocations are open.

With respect, then, to the proposed literacy test, it would exclude the very classes whom we need most. In fact, nearly 30 per cent. of the Jews, over fourteen years old, coming over here during the fiscal year 1909, reported that they could neither read nor write, 4,832 males to 7,369 females, and this is true of about 56 per cent. of the South Italians, 37 per cent. of the Polish, 35 per cent. of the Russians, 45 per cent. of the Bulgarians and 30 per cent. of the Croatians. Of course, as regards the Jews, the condition is largely explained by the fact that Russia studiously throws obstacles in the way of their getting an education, and on arrival here, their zeal in this respect cannot be restrained, and this zest for education is largely found in the other races, too. Indeed, the remarkable fact was established by the census of 1900 that the percentage of illiteracy among the children of foreign-born citizens is appreciably smaller than among those of native-born white parentage. President Cleveland vetoed a bill establishing a literacy test for immigration in a famous message in 1897, and similar measures have been opposed by Carl Schurz, Dr. Senner, President Eliot, President Schurman and many other eminent thinkers, nearly all of whom, however,

expressly favored its imposition as a condition for naturalization. As commonly proposed, the literacy test is not made applicable to children under fourteen nor to wives of admissible aliens, accompanying or joining them, and in this form, its excluding effect would be applicable to only about 40 per cent. of such debarred Jewish immigrants, for nearly two-thirds of the Jewish illiterates were women. For 1910 we can study this better; 21 per cent. Jewish males, over fourteen, were illiterate as against 37 per cent. females. It is, however, chiefly because of its ill effects in excluding South Europeans, whose manual labor we sorely need, that the proposed amendment should be opposed.

Similarly, the proposal to exclude unskilled laborers, unaccompanied by wives or families, is very unwise. Its effect has already been considered herein, in connection with new administrative methods as to inquiring of heads of families coming over here, as to possible excluding circumstances regarding their families abroad. It would lead to an enormous increase of proper exclusions by reason of encouraging immigrants thus to handicap themselves in untried surroundings and before they can secure positions, and would lead to many becoming public charges in practice. The proposal is based upon the fact that many immigrants, especially South Europeans, return to their native country after having earned money here during a few years, but it is an utterly erroneous assumption that anything like a majority coming over here at first without their families, intend to return to Europe again, while there are no figures to show how many of the wives and children coming here are merely joining the heads of the families who had preceded them; 81 per cent. of immigrants of all races, in 1910, came to join relatives, and 94 per cent. of the Jewish immigrants. The enormous Italian, Polish and Hebrew attendance of children at our schools also rebuts this erroneous assumption. On the other hand, as has been well pointed out, the very fact that many immigrants come over here temporarily merely, acts as a sort of safety-valve for us, enabling us rapidly to overcome ill effects of panics through such natural diminution in the supply of labor here. For instance, in the year ending June 30, 1908, by reason of the panic of that period, the enormous number of 395,073 emigrant aliens and 319,755 non-emigrant aliens, or over 714,000 persons in all, departed from the United States for abroad, thus leaving so many fewer here to find work in trying times. While it is doubtless true that as a rule, immigrants intending to remain here permanently are better acquisitions for us, still, even this other class has such special uses for us, and as regards the Jewish immigrant, scarcely any

ever even think of returning abroad, to settle there again. In as far as it is proposed to levy the head tax so as to discriminate in favor of men with families, the plan is similarly unwise, as tending unduly to handicap the immigrant in new surroundings, by inducing him to bring his family over at once, before he is really ready to support and make a home for them here, though a reduction in the head-tax for wives and children of resident laborers might be wise. So, also, the proposal to increase the head-tax would further seriously handicap the immigrant at a critical period, and is not needed for the support of the immigration law machinery. Fixing the amount of money immigrants are required to have in their possession on arriving, especially if put at a high figure, would tend to exclude many deserving immigrants, for the Secretary of Commerce and Labor reports that the average brought over during the past fiscal year was only \$27 per person, while on the other hand, it would put a premium on fraud and evasion, as money even now is often borrowed, without danger of detection, merely for the purpose of exhibition on landing. The proposal to require a certificate from the police records of the country of origin as to immigrants of certain races, might not be harmful if limited to certain countries like Italy, where they can be fairly and freely secured, and might keep out additional criminals, but would create injustice and hardship if applied to Russia, for instance, which will not even allow its persecuted Jews to leave openly and in peace, and many of whose officials are corrupt and notoriously prejudiced. In fact, however, it is reported that even in Italy "moral certificates" to-day constitute the subject-matter of frequent sale to persons, other than those to whom they are issued.

An important suggestion is made to the effect that a limitation might be established in respect of the number of immigrants arriving annually at any port, so as to effect a more satisfactory distribution. President Taft has himself, very wisely advocated the devising of methods to promote a better distribution of immigrants, and Attorney General Wickersham has well said that "any plan which has in view a distribution of the alien among the rural population and to procure their services in the development of industries in which labor is deficient, and thus remove them from competition with American laborers in those vocations which are overcrowded, is in entire accord with the spirit of our immigration laws."

We Jews have long since recognized this, and our Industrial Removal Office has removed over 55,000 of our co-religionists from the large cities to the interior during the past nine years, to an extent, which no

other class can in any way approach, and the Jewish Agricultural and Industrial Aid Society, and other organizations are successfully stimulating farming among the Jews. So also, the so-called "Galveston Movement," organized three years ago, has been successfully deflecting Jewish immigrants from Russia, intending to go to New York, to Galveston instead, for distribution through the country west of the Mississippi. It is gratifying to know that attacks on this movement, based upon doubts as to its legality under the "Contract Labor" and "Assisted Immigrant" provisions of the law, have now been dropped, as the Attorney General, Secretary Nagel and Assistant Secretary Cable, after thorough investigation and study, have now recognized the legality and great value of this far-reaching undertaking. In all these movements, the great importance of effecting a better distribution of immigrants has been recognized, and the federal "Information Division" in the Immigration Bureau is doing splendid work along the same lines, though its activity has been cramped by limitation to farming and domestics, and so also various State and quasi-public bureaus are accomplishing much in distribution of immigrants. The total percentage of foreign-born persons in the United States in 1900 was only 13.7 per cent, approximately the same as now, as against the higher figure 14.8 per cent in 1890. In fact, while the foreign-born population of the United States amounted in all in 1900 to only about 10,500,000, only 6 per cent of these resided in the Southern States. Some limitation as to ports of entry may do good if practicable and carefully handled. It is important to observe, however, that increased rigor in the enforcement of the Immigration Act provision as to likelihood to become public charges, and measures to force immigration officials at other ports to adopt the harsher New York methods, tend strongly to counteract these very efforts. It is becoming more and more necessary, under these new conditions, for immigrants with small means to land at ports where relatives can at once appear to testify for them on the issue of "likelihood to become a public charge," so that embarkation for ports distant from their relatives is becoming daily more dangerous, even for healthy, industrious immigrants. Nor has any official method been devised for giving due weight, or even attention, to affidavits from friends or relatives residing in the interior, and our present stupid "star-chamber" methods, with right of counsel denied, greatly complicate this point. Nor, on the other hand, is it true that the American destination assigned abroad by immigrants remains their permanent location in even substantially all cases, as is proved by the

work of the "Industrial Removal Office," and thousands of individual removals to the interior from New York, Philadelphia, Baltimore, Boston and Chicago. Personal advice from relatives and friends settled in the large centers, and adjustment there to American conditions, commonly precedes removal to the interior, even in the case where this takes place. A regulation authorizing public officials, say judges and United States commissioners, to certify to the truth of affidavits by relatives of immigrants in their behalf, in the interior, would help distribution along greatly.

The fact, therefore, that 280,000 of the 1,041,000 immigrants who landed in the fiscal year 1910, mentioned New York State as their intended future residence, does not show, by any means, that all these persons will permanently remain in that State, though the percentage even thus going to New York is smaller than is generally assumed, and is constantly decreasing by natural causes, having fallen in 1910 so as to be about 27 per cent instead of 30 per cent the former year. So also as to the Jewish immigration, the great majority of their relatives and friends being settled in the large cities, induces them, temporarily at least, to go there too, as witness the fact that of the 84,260 Hebrew immigrants who came over during the fiscal year 1910, 51,971 were bound for New York, about 5,350 for Illinois, 4,600 for Massachusetts, 3,200 for New Jersey, 7,500 for Pennsylvania and 1,050 for Maryland.

On the other hand, large sections of our country are greatly in need of immigrant settlers. While the census of 1910 shows an average increase of 20.9 per cent in population over the census of 1900, for the whole country, Iowa, for instance, disclosed an actual decrease of population of 3 per cent, and other States in the great central section of the country, and Maine, New Hampshire, Vermont, Maryland and Delaware showed the smallest increases, to-wit, less than 10 per cent, while the Southern States and Ohio, Michigan, Wisconsin, Illinois, Minnesota, Nebraska and Kansas, were also below the average, with increases of only 10 to 20 per cent.

As a matter of fact, the Immigration Commission itself reports that housing conditions among the poor were found to be decidedly better in the so-called congested cities of New York and Chicago, than was expected, and in fact average only 1.34 persons per room in immigrant sections, and compare favorably with those in smaller industrial centers, thanks, doubtless, to tenement house and other civic reforms of the last decade or two, and improvement in transit facilities. The valuable

recommendations of the New York State Commission on Immigration, of which Mr. Louis Marshall was chairman, tend, further in this same direction, as will also the work of other similar commissions.

The extraordinary suggestion is also made by the Immigration Commission that a limitation be considered of the number of immigrants of each race arriving per annum, to a certain percentage of the average of that race arriving during a given period of years. It is difficult to understand how such an un-American suggestion could even be penned! Besides its probably unconstitutional character and its grave violation of treaty faith—since our treaties and statutes now expressly invite migration of all races except the Mongolian—no expedient could be devised tending more strongly to develop race prejudice and race feeling than this. The so-called “race-values” of different nationalities are based upon pure unwarranted assumption as to which no two authorities could agree, even if one could satisfactorily ascertain the average characteristics of any one race.

In fact, the Immigration Commission has itself made a most valuable contribution to science, in showing that even physical distinctions in immigrants are rapidly outgrown under the favorable conditions obtaining in our country. In its interesting special report on “Changes in Bodily Form of Descendants of Immigrants,” it concludes “that racial physical characteristics do not survive under the new social and climatic conditions of America,” and that “children born not more than a few years after the arrival of the immigrant parents in America develop in such a way that they differ in type essentially from their foreign-born parents.” Advocates of such new race discriminations should realize, as George William Curtis pointed out in the Republican convention that first nominated Lincoln for the Presidency, that their proposition involves voting down the Declaration of Independence with its declaration that “all men are born free and equal,” which has not yet become obsolete in this land.

As regards the Jewish immigrants, we are fortunate in having recently received high encomiums as to their desirability and useful, adaptable, character from President Taft, former President Cleveland, ex-President Roosevelt, ex-Mayor McClellan, Mayor Gaynor, President Eliot and many others. With race-lines drawn, however, very likely plenty of immigrant inspectors would be found to discriminate against the Hebrew immigrant, in view of reckless, ill-considered arguments as to race values emanating from certain of their immediate superiors, administrative officials who have no right to publicly air their narrow

views at all, in view of their official positions. Incidentally, such device would also probably reduce immigration from the very races which such doctrinaires claim are most desirable.

This brings us to a consideration of certain fundamental blunders in the report of the Immigration Commission. Though the Commission chose to follow the example of the Department of Commerce and Labor, and segregate the Hebrews of each land as a separate race in its investigations, it studiously avoided doing this in its report, where we find the Jews included in the so-called "new immigration," described as coming chiefly from Austria, Russia and Southern Europe. In consequence, the problems connected with Jewish immigration, are entirely ignored, and the Jew is, most unfairly, put in a class described as "in general" possessing such characteristics as the following, which in fact are wholly inapplicable to him: We are told that:

"The new immigration is very largely one of individuals, a considerable proportion of whom apparently have no intention of permanently changing their residence, their only purpose in coming to America being to temporarily take advantage of the greater wages paid for industrial labor in this country."

"Nearly 75 per cent of them are males."

"Immigration from Europe is not now an absolute economic necessity, and *as a rule*, those who emigrate to the United States are impelled by a desire for betterment, rather than by the necessity of escaping intolerable conditions. This fact should largely modify the natural incentive to treat the immigration movement from the standpoint of sentiment, and permits its consideration primarily as an economic condition."

Mr. Bryce to the contrary, we are also told that "the new immigration as a class is far less intelligent than the old."

Accordingly, while studiously ignoring treatment of Jewish immigrants as a class—despite adoption of this so-called scientific method—and despite the express recognition of the fact of the acceptance by the House of Representatives in 1906-7 of the Littauer Amendment, exempting from the class of excludability as likely to become public charges, immigrants avoiding "prosecution or punishment or danger to life or limb on political or religious grounds," measures are recommended, avowedly designed to cure alleged evils, wholly inapplicable to the Russian and Roumanian Jewish immigrant. A sop is thrown to the Jews near the end, in the shape of a declaration, wholly ignored in the practical recommendations, to the effect that

"While the American people, as in the past, welcome the oppressed of other lands, care should be taken that immigration be such, both in quality and quantity, as not to make too difficult the process of assimilation."

In the light of the declarations of both political parties in their platforms of late years of sympathy and proffers of aid for the Russian Jew, in the light of the noble-minded utterances of the past few months to this effect on the part of the Presbyterian General Assembly of May 24th, and of the General Convention of the Episcopal Church of last October and of other Christian denominations, we have a right to insist that our established national policy be not departed from, for inconclusive and specious reasons, and against the true interests of the country, which its Jewish citizens also put first. Jefferson, in his famous message of 1801, well said: "Shall oppressed humanity find no asylum on this globe," and this sentiment was re-enacted by Congress at the close of the former Know-Nothing era in the act of 1868, still on our statute books of Section 1999 of the Revised Statutes, where "the right of expatriation" was recognized as a "natural and inherent right of all people, indispensable to the enjoyment of the right of life, liberty and the pursuit of happiness, and in the recognition of this principle, this Government has freely received emigrants from all nations and invested them with the rights of citizenship." It is recognized in theory, also by the Immigration Commission in the passage cited above, but denied in practice.

Extraneous evidence shows, moreover, that the report of the Commission was hurriedly prepared, without deliberation and proper consideration. Submitted at the very last hour of the life of the Commission, a dissenting member affirmatively states that he had no time even adequately to pen his dissent. We know that many of the reports, which it was supposed to summarize and utilize in its recommendations, were received too late for consideration even, and often not received at all. Its entire method of procedure was unwise and unprecedented. Instead of holding public sessions for instruction in actual conditions and the discussion of proposed remedies, it worked in camera, and failed to permit its important proposed remedies to be even known, discussed, or criticised before submission. In fact, as already pointed out, its conclusions are unwarranted, even by its own *ex parte* investigations, and were prepared *a priori*, to meet certain wishes and demands. One is forcibly reminded of the declaration made on the floor of Congress on January 24, 1910, that a member of the Commission had

stated privately that only he and one other member of the Commission itself knew its real purpose.

In fact, the whole restrictionistic movement today is artificially created. While the evils of immigration—such as they are—exist almost exclusively in the large cities, where most of the immigrants settle, those sections are opposed to restrictive measures. At the last election the candidates for Congress in New York City were polled on this issue, and, almost to a man, reported that they were opposed to additional restrictive measures. Similarly, when the votes were heretofore taken, Philadelphia, Baltimore and Chicago's representatives also expressed themselves in opposition to restriction by large majorities. Even in Boston, where the immigration question has become an issue in factional politics, strong opposition to restriction has developed on the part of many, though that city is the hotbed of restrictionism, and the Immigration Restriction League, located there, has systematically for years engendered anti-immigration feelings wherever possible. In fact, numerically, the chief opposition to the immigrant comes from the sections which need his labor most, and are in fact largely unfamiliar with him. It is easy to convince the laborer at first blush that his labor will be better rewarded if competition can be eliminated; a campaign of education will make him and his fellow voter see that this great land, with its wonderful, only-partly developed resources, has room for millions more, that there is work enough for all, and that wages have advanced, not become lowered, with large immigration, and that the immigrant accession adds millions each year to our national wealth, and creates a demand for millions worth of additional goods. Even the farming classes would be still further reduced in number, if the immigration of laborers were suddenly checked, and the "lure of the city" thus suddenly and artificially made still greater for the country dweller, with business demoralization and panic following in the wake. On the other hand, over 300,000 much needed farmers and farm laborers came here in 1910.

In his annual report for 1910 even the Commissioner General of Immigration points out that a literacy test would be of little value, but he renews a recommendation for much more objectionable legislation, which the Immigration Commission did not even deem worthy of notice, to-wit: the exclusion of a new class, to be designated as "economically undesirable," which phrase is so indefinite that it might be better directly named "victims of prejudice," and also the exclusion of persons unable to pass a physical test equivalent to that required

for recruits for our army, which, absurdly, would shut out an overwhelming majority of our own citizens, if applied to them. On the other hand, he makes some suggestions worthy of serious notice, based upon the recent decision of the Supreme Court in *Ocean Navigation Co. vs. Stranahan*, 214 U. S., 320, declaring the statute constitutional, penalizing the steamship companies without judicial proceedings for bringing immigrants over medically unfit, where careful examination before embarkation should have disclosed the illness. He now recommends applying this principle so as to collect *administrative* fines under penalty of refusal of clearance, for inducement of immigration by steamship companies.

In one of his most famous orations Edward Everett pointed out in eloquent language the relationship of immigration to American prosperity, in the course of his lecture, "The Discovery and Colonization of America and Immigration to the United States." It is well to bear in mind his summary of our national history; he concluded with the words:

"Let me remind you that its first incident is Columbus, begging bread for his child at the gate of a convent. Its last finds you the stewards of this immense abundance, the almoners of this more than imperial charity, providing employment and food for starving nations, and a home for fugitive races."

ADDRESS OF HON. CHARLES NAGEL

Mr. Chairman, Ladies and Gentlemen:

First, I want to thank you for the welcome which you have just extended, and for which, to be entirely frank with you, I was not prepared, in view of some of the things to which I have just listened. I have to confess to you that I have no prepared speech, and in that respect I shall have to ask your indulgence.

Gentlemen, do not judge me by an unfortunate phrase, or by a disproportionate statement. It has been my custom always, if I speak at all, to speak unreservedly and in entire frankness. In that respect, at least, if in no other, I am a well-qualified member of this administration. In politics and elsewhere I have said, "If you will not allow me to speak with the same freedom that I would have observed at home, do not let me speak at all"; and that rule I propose to follow here.

When the invitation was extended I was not quite sure to what subject it was proposed that I should address myself. But in that

respect, I take it, the statement to which I have just listened has helped me out. I think there can be no possible misapprehension as to the subject to which you would have me speak.

I am hardly qualified to discuss the general question of immigration, perhaps less so now than before I came to Washington, because the obligations of my office have been so absorbing that I have had less time than ever for reflection. Indeed, one of the reasons why I am entirely unprepared today is that up to the last moment yesterday afternoon my time was taken up with the individual cases of immigrants who are appealing to us. This is the state of my office. It is not as it should be, but we are doing the best we can under conditions that are proving almost oppressive to us.

I do not share the opinion that the immigration of the present is in all respects different from that which came in earlier years. In some respects, yes. I do believe—I think I know—that there are more and more people coming to this country for a temporary residence, coming here to live for a time, and to return; and that the feeling and motive that prompts them to come is not that strong sense of patriotism and desire to live under a free form of government, that must have actuated all men in earlier days. But I am unwilling to accept that all the immigrants of the present time are to be classed with them. On the contrary, I believe that the people of different countries have moved at different stages. England was early, France and other countries were early; Germany's large immigration came later, because her development and the sense of individual independence came later. The opportunity to get away came later, and that was the reason why the stream from Germany came over at a later period; but the motive for coming over was the same that had prompted the peoples of England and other countries in earlier days. Even so it is with other peoples. There are countries later than Germany, and there are countries in which the people today find their first opportunity to break away from the conditions that have entrained them. They come today prompted by the same desire, not only to improve their material condition, but to come to the country in which they may breathe freedom and enjoy right and justice.

I don't believe that anyone would doubt my attitude with respect to the general question. I feel so sure of myself that I should be unwilling to defend myself against such an imputation. Of course we must admit that conditions in our country have changed somewhat; we must admit that with us it has become more of a political and

social question than was the case. There are certain limitations that begin to creep even upon our vast resources, and there are certain considerations that our country must have in mind in all its dealings with other countries because of the position that we have taken in international politics. That goes without saying. So we must formulate our policy in some respects. But that does not belong to me; I am not concerned with it; probably know less about it than you do. With the report of the Immigration Commission, too, I have little or nothing to do. It is not my contribution. You know how the Commission was made up, regardless of party, and with three members upon it selected by President Roosevelt. There is the report. I have read only the summary. I understand that it makes many serious observations, but not many serious recommendations.

There are only two that strike me at this moment, although I should be glad to comment upon many of them. One is the suggestion, and not the recommendation, for an illiteracy test. My mind is made up upon that subject, based largely upon my brief experience in office with the appeal cases that have come before me. I am on record as being unqualifiedly opposed to the illiteracy test. It is not a matter of sentiment. You may indulge sentiment in an individual case, but you cannot indulge sentiment in governmental policy. You must know why you come to your conclusion. I think I know why I have come to mine. I care more for the sound body and the sound mind and the straight look out of the eye and the ability and the willingness to work as a test than for any other test that can be given.

I have been asked whether illiteracy stands in the way of assimilation. I say unqualifiedly in my opinion it does not. On the contrary, to be entirely frank about it, I believe that the ability to read and write a foreign language, aided by your foreign press in this country, tends to perpetuate the spirit of colonization longer than it can be if a sound mind and body comes in without the ability to read and write and is forced of necessity to resort to our own language.

Granted the fitness of your subject, you can not stop him after he gets here. I am not here, gentlemen, to seek applause. It is too serious a matter to play to the galleries. I would not want to say here what I do not hope to carry out. I despise a platform to catch votes, and I despise a man who will overstate his case before an audience to get their temporary approval. I recognize that you are an audience representing one phase. To me you represent the whole question, and whatever I say to you I mean to apply to all people

in like conditions. I am an officer of the United States Government, and I speak to you as citizens of the United States.

There is another subject to which the Immigration Commission refers about which I should like to say a word, and that is in reference to the boards of special inquiry at the detention stations. I do not wish you to understand me as joining in the words of condemnation to which I have just listened. I do not. But I do say that in my judgment the system under which we are now compelled to operate is seriously defective. I do not justify the attack upon men, because I believe they are doing the utmost. The more responsible men who are singled out here for attack are men who have been drafted for the service, and who may retire any day because they won't stand it any longer. But the system under which we work, in my judgment, is not equal to the situation. The fact, Mr. Chairman, is that immigration is a matter of human concern. It is only one phase in my department, occupying one bureau out of twelve. I need not say to you that we have some other things to think about and to do, but the Immigration Bureau is what I have called "the live wire of my Department." We are constantly in the presence of the human question, and for that reason alone it has received the chief attention of my department.

Now, I believe that instead of having our office in Washington to consider large numbers of appeal cases, examine records, to seek in our discretion to smooth out the creases of these cases, the true policy would be, perhaps—not by depriving us of the right to hear appeals—the true policy would be to have at the inception as competent a board of qualified and trained and well paid men as we can command. That only goes back to what I have advocated in other fields for many years. You know, in our country, as in others, we are always in danger of giving undue importance to the material side of life. The eternal chase concentrates our attention and leads to the neglect of the real human interest. You will observe in every State and in every city that the judges of the civil courts, where the material interests are tried out, are selected with a good deal of care to find competent men well versed in law. You will find that when it comes to the selection of the criminal judges, where the affairs of human life are thrashed out, very much less attention is given to their selection. And when you go further to find the judges in the inferior courts, practically no attention is given, but those places are dished out to the political hacks. And yet it is in the lower courts where the vast mass of the people come in contact with government and are expected to

derive understanding and confidence. That is where they come in contact with the Government. They have little or no material right to try, as a rule, in civil courts. They strike the Government in the inferior courts. And if I had my way I would so arrange it that for the lower courts, where the smaller man comes to be tried out, the wisest and best qualified man would be placed, in order that every man, woman and child who reaches that tribunal, whatever the result may be, may at least have some understanding of how and why it happened. That is the foundation of the stability of government. That is where we have got to strike. This is not sentimentalism. The juvenile court has proved that it is right, has justified the selection of men who will try children as children, and find and relieve outside of the hard letter of the law as far as may be to meet the particular case. I am only repeating what I have practiced. I have been in office where I had the right to send children to the house of refuge or not, and my rule has been to keep every child out of the house of refuge as long as I could, and especially as long as the house of refuge was treated not as a protection but as a prison.

What is true there is just as true here. The case is more difficult, I think, as the last speaker has pictured it to you. I do not think that he has given our side of it and our obligations. You will not ask me to enter into a controversy here; I won't do that. I did not expect to be invited to meet that. But you must bear in mind aliens come in large numbers, as you know. We have a limited force, and the compensation that we can pay our force is limited. It is so with the boards, it is so with every one in the service, and we cannot do more than employ the best that we can command in quantity and in quality. That is our position. Now, if we had strong boards, and enough boards to promptly take up these cases, composed of men who should know from their experience how to ask questions, who could get out of the rut and out of the stereotyped method, who would be appealed to by the individuality of every alien, as a good judge would, we would get the whole truth, as a rule, in the beginning. The accepted form of questions does not bring it out. It does not call for responses. It may not be searching enough to detect either the truth or the falsehood of the statements of the alien. That is where our difficulty lies. The Commission recommends it, I recommend it, and I would rather have that one measure enacted as a relief measure than all the others that have been suggested.

Now, I don't know how conversant you are with the provisions of

the law, because, after all, you and I occupy somewhat different positions. You have the right to indulge your personal views, but I am bound by oath to enforce the law. Perhaps we are not so far apart as we might be. I do not believe in the letter of the law, but in its spirit. I believe that a law should be used to carry out its confessed purposes. I think one of the great dangers to our country now is that we are loaded down with volumes of statutory law, half of us not knowing that they are on the statute books, and the rest of us when we read them not knowing what they mean. So I believe in taking the whole act, reading into it its essential purposes as I see them, and enforcing it with as broad a spirit of equity as I can engraft upon it. I see I am in danger of saying things that you like, and I do not want to say them at the expense of men in whom I believe. I do not want to unload on the other man; I don't believe in it.

Two essential clauses in the law in which we are interested are that all aliens who are likely to become public charges shall be excluded; the other is that all aliens as to whom the physicians make a certificate that they are mentally or physically defective, so that it may affect their ability to earn a living, shall be excluded. These present questions for tact and judgment and discretion. Naturally the commissioner at the station is more conservative than I would be. He ought to be. I have more discretion than he has to exercise, and he does not take exception to me if I overrule him, as I often do.

Upon those two clauses the controversy has arisen. Now, take the first, the alien who is likely to become a public charge. The first question is, what is a public charge? The meaning of those words has been trimmed down until there is practically only one thing left. To become dependent upon private charity we have construed not to be a public charge. Coming to this country and just barely surviving here, and enjoying all the advantages and the protection, and contributing very little, is not a public charge. The interpretation has not been strained against the alien. The attempt has been to deal generously with the individual case.

Something has been said here about a money requirement. There is no money requirement, and we ought to get right about that. Sometimes the presence of money is deemed necessary and sometimes it is not, and the fact of money or no money is only one of the factors that are considered in conjunction with the other conditions presented by the case; and that is all there is to it. Mistakes? Of course we

make mistakes. Do you suppose we make no mistakes when we sometimes get 3,000 aliens a day, with our limited force there, grinding away? I am amazed that we do not make ten times as many as we do make. And instead of picking out the individual case and holding it up to the public as an illustration of what is done, you ought to come forward and defend us in our efforts to do justice to the individual. Some of you do. I have good friends among you, many who understand my motives and my purpose, and who will endorse what we are attempting to do.

Now, take the other clause. If the physician makes a certificate that the alien is mentally or physically defective, or has a mental or physical defect of a nature which may affect his ability to earn a living, the first question is, Is that certificate conclusive upon me? Broadly read, it is, because Section 10 says that it shall be conclusive. That is, where the board bases its decision upon that certificate, the certificate is conclusive, and, strictly speaking, nothing more can be done according to the statutory provisions. But we do do things constantly—for which you may call me a lawbreaker if you want—but if I break the law it is in behalf of the alien and not against him. If I strain it to meet the case, it is to help out a case of hardship, to prevent the separation of members of a family, to do what I think must have been intended to be done, treating it as an administrative law, and I do not strain it to accentuate hardship or to bring tears and sorrow.

There is another provision of the statute which says that if an alien is assisted he shall be excluded, unless he can affirmatively or satisfactorily show that he does not belong to one of the excluded classes. In other words, if he is assisted, if the money is sent to him, if his passage is paid, or he is in any manner assisted, according to law he must affirmatively and satisfactorily establish that he is not liable to become a public charge.

Now, that presents an awkward situation. If a wife comes over, or a child comes over, immediate members of the family come over, belonging to some one who is established in this country, that clause has no effect, because they are entitled to the support of the head of the family, and therefore are in no danger of becoming public charges, provided always that the head of the family has established himself. Suppose they have uncles or remote relatives or friends upon whom they have good right, according to the usual rules of society, to depend; suppose they have been helped and assisted, and do not present a

case that leads you to believe that they are now in a position to take care of themselves, what are you going to do about it?

Am I to disregard the law altogether? If I did, what would be the result? It will only add fuel to the fire. The tendency will be to make the law itself more severe; and, be the end or purpose what it may, I am sworn after all to enforce that law, and as long as I am there I do propose to enforce it, within its reason, not harshly, as has been said, but fairly, according to its legitimate purpose, leaving it to you and others, if you think the law is too harsh, to address yourselves to Congress, which alone has the power to make the proper amendment.

Now, of course, I imagine I am detaining you here longer than I should, but we have started, and I told you I was going to be frank about it, and I want to show you just by a few illustrations how dangerous it is to examine a record superficially, and to judge a department upon the result of such an examination. I do not speak in the spirit of complaint of anyone. I have no complaints. I have been very considerately treated, and I appreciate it. But when I find, for instance, in one of your newspapers an editorial commenting upon the Schwartz case, saying that there was no possible reason for detaining two boys, sixteen and seventeen years old, and saying further that if boys of that character, so well equipped, with their father and their uncle prosperous, are to be detained, we may just as well close the doors of Ellis Island, I must have the right to comment upon such criticism. Now, that was not written in bad spirit. I am not complaining of it. I am only saying that it operates more against you than it does against me. That is what it does. You do not strengthen your cause by weakening me, or by destroying confidence in the administration of this Department or this Bureau; you strengthen yourselves by helping me to correct my mistakes, but not to scold if we cannot agree.

The truth about the Schwartz case was this: Two boys came over, sixteen and seventeen years old. They were examined in the usual way. They testified that their parents were on the other side and that they were going to a wealthy uncle. Well, that sounded pretty good, didn't it? But that miserable board over there, about which complaint has been made, concluded that perhaps that was not the whole case and pursued the inquiry. Two boys sixteen and seventeen years old were pretty young to let in. We wanted to know to whom they were going, for we are responsible for those boys. We have been criticized again and again for not letting young girls in. We never

let them in unless we think we know absolutely that they are going to safe surroundings.

We found that the boys had not told the truth. The mother was on the other side, but the father was here. The man who according to our law was responsible for those boys when they got here, and could take them away from their uncle or anybody else, was here, and did not respond. Why not? Because he was not prosperous, as the newspaper has claimed. He was here only six months, and he had not established himself, and he was afraid that if he showed himself the two boys would not be given to him, he not being in a position to take care of them. We found that the boys had brothers in this country, of which they did not tell us. Those brothers said they did not show up because they were single, and were afraid we would not let the young brothers come to them because they had no households. That is very true. We would have hesitated; we would have hesitated in both cases. But the point of the matter is that we were entitled to know the truth; and I am in favor of saying now, as I have said at Ellis Island, that the first condition to the admission of an alien into the United States should be a truthful statement to the representative of the Government. He who comes and admits the weakness of his case first, is in the best possible position to state the strength of it afterwards; but he who seeks to conceal from me—be it child, woman or man—leaves it to me to find out the truth, or compels me to convince him of the facts, makes it difficult for me afterwards to let him in, because he has injected an element into the case that I cannot approve.

These boys were not excluded (although that impression was given), in spite of that investigation. When we found out the facts, that they had brothers here, that the father was here, and that they had an uncle who could make himself responsible for them, in spite of the fact that we had found these facts without their assistance, we concluded that they were healthy, fine-looking boys, and we made allowance for the temptation to tell us a lie, and let them in. But would you have criticized us if we had not?

There is another case which has been brought to the attention of the President of the United States in printed form, by way of accusation, that surprised me. I can only mention one other case, but I want you to understand—and you are citizens of the United States, and you are interested in this government as I am—I want you to understand that we are not dealing with these cases haphazard. We think at least that we know what we are doing. Mr. Simon Wolf is in

Washington and keeps a pretty close watch on us. If we ever miss him, we think the world is going to stop. I frequently inquire about eleven o'clock, "Has Wolf been here?" That is the situation there.

Take this case. A woman comes in with two children, small boys. She represents to us that her husband is in this country. We believe it, and she is let in with the boys. Six months afterward comes a daughter who represents that she is sixteen years old, to join this family. We believe her, and we let her in, with proper precautions to have her reach the family. A few months after we get a complaint from the juvenile court that the woman has been there and has been trying to have one or two of her children committed, and calling our attention to the fact that cases of this kind are multiplying. The charge against us comes from the other side. We investigate it, and we find that the husband stood the wife just one week and then went back to Russia, and he is reported to have again married over there. We find that one of the boys is practically an idiot, and was when he got in, and it was not detected. We find from the mother's own statement that the daughter who came in after her was about thirteen years old, and not sixteen. She might not have come in if she had told the truth. Afterwards the mother said she was not quite sure about that, and she could not tell when the girl was born. Now, when a Jewish mother cannot tell when her daughter was born, I have my doubts. It goes without saying that if the truth had been known in the first instance, not one of them could have gotten in, not one of them. There was nothing to support the case. The husband did not want her. It was one of those cases where he probably came away from them, and when they got here he probably went back to get away from them again. She was here practically helpless, with one child that had no right to be here. If that child was sent back, she, under the law, was compelled to go as the guardian, and there we were.

Now, I think the decision was right. But whatever conclusion anybody might arrive at, was that a proper foundation for a charge of maladministration at Ellis Island, I ask you? Was it right to attack men who work from morning to night—I am not speaking of myself, I am speaking of my subordinates—was it right to attack them and destroy their efficiency and their good will? After all, you know what an unjust charge does. Finally a man gets his back against the wall and hits. We are all that way. We are very human.

I said to a lawyer the other day, who appeared before me, who had written a letter a day or two before, about six pages long—I said,

"My friend, you have written that letter. I want to say to you that the only thing you accomplish by writing a letter of that kind to the Department is to make it more difficult for me to be just. I have got to get that letter out of my system before I can pass on the case. You are the worst enemy your client has got. I will pass on this case, I will promise you, without having my judgment clouded by your correspondence, but you do not do this client or any other client any good by that kind of communication."

"Well," he said, "I did not intend anything personal."

I said: "You go upstairs and read that letter alone, take a half hour, and come back and tell me what you think."

I say this is the live wire Department. It is the human case. Hundreds and hundreds of cases come to us. We have now from thirty to forty records a day, and you may know what it means for two men to endeavor to consider them. If anybody believes or is under the impression that those cases are perfunctorily passed upon by subordinates and simply signed by us, Brother Wolf will set you right. Every record is read by one of us before it is signed, and we are prepared to be responsible for the general result of what we do.

Now let me call your attention to another thing. The law says that on appeal I shall not consider anything but the records. I had Mr. Kohler at one time say to me that I had no right to consider anything but the records. I said, "You had better abandon your appeals." If I did not construe this law with sufficient generosity to conclude that I have the right to get the atmosphere of the case; if I had not the right to listen to the friends after the record is made; if I had not the right to satisfy myself as to the ability of somebody else to take care of these people; if I had not the right to pursue these inquiries, or perhaps to appeal to Mr. Wolf to know whether he could get a bond to get in a helpless child; if I had no right to do that—why, half the cases, or three-quarters of them, could be perfunctorily signed in ten or fifteen minutes. Don't begin to tinker with that phase of the case, because you will destroy the only foundation for a sound discretion that I can possibly exercise.

There is another element here. I have ultimately the right to take bonds in cases liable to become a public charge, executed to the Government. Probably there I am more conservative than you would have me be. I will tell you frankly how I look at it. I don't like to build up a bonding business. I don't think the law really intended that I should establish a regular bonding business. I don't think the

law really intended that I should establish a regular bonding system in the Immigration Service. In other words, I do not think that I should take ten or fifteen bonds a day. They are never pursued. You know what it means. The cases that are right do not need a bond, and the cases that are wrong change their names and we never get them. It is no use. Now, I do not want to pretend to do a thing that I know I am not doing. And beyond that, I don't believe in that kind of a guaranty.

I said to a man the other day, an uncle: "Now, you offer to give bond. I do not care for your bond unless you can satisfy me that you are the kind of a man who would not let your own blood suffer and go to pieces." I would not let the child in. That is what I want to know. I want to know whether the guaranty is of your heart or of your pocket. That is what we are giving our time to, to find out what kind of people we are dealing with. If we are dealing with true men that are interested and understand our laws and want them enforced, and recognize the responsibility which they assume when they ask to have somebody admitted, we are always ready to do the very utmost; but the mere perfunctory bond, as a bridge to come in over, I, as a general rule, have very little use for.

Now, something has been said about our decisions and publishing them. Well, I think Mr. Kohler must be a very young lawyer if he wants any more reports. The great difficulty in this country is the multitude of printed decisions. Too many laws are bad enough; reports are worse; and the old theory that every man is presumed to know the law has become something of an absurdity, because no one does or can. Now, if we begin to write decisions in all these cases, you will simply keep your aliens in the detention stations a little longer, to begin with. We will have to be careful about every word in our decisions, and they won't be any better than they are now. The general consequences will be worse, and the law will be more severely construed, because then I will have to stand for every single decision as a precedent. The very thing that Mr. Kohler suggests—that men will know then how to govern themselves—will make it necessary for me not to admit anybody unless I am clearly willing to admit everybody upon the same basis. When I make a case for Russia, I make a case for Turkey; when I make a case for Turkey, I make it for Italy, because this Government knows no distinction. If I am to make a record, I cannot consider the conditions to which you have referred today as an incentive for coming to this country, and I have.

got to stand on the individual man's case alone, away from all the things that you have spoken about. I told you I would be frank. I am trying to be. There is more than that in the precedent. It is not only that every other case has a right to the enjoyment of what I grant in one, and that, therefore, I would have to be more conservative, but the precedent I make would be a precedent for the steamship companies just as well.

Now, I conceive that you are governed largely by sentiment. I do not like to be denied having some sentiment myself; but I do not believe that steamship companies are controlled by sentiment. With them—and it is no criticism, for business is business—it is a freight proposition, human freight, but it brings money just as well.

Now, if I am careless in my precedents, or if I am weak under the present system, and yield here and there (as I often do because it just seems to me that putting it all together I cannot sign the warrants, and I do not), every precedent of that kind is an inducement to try it over again with people who ought not to come in. The steamship companies bring them here to try it on, and where I yield to relieve one, I invite trouble and sorrow for a dozen more. That is what I do, because it is cruel to bring them over here unnecessarily only to send them back.

The true method would be to protect them as far as possible against that. That is the value of precedents; that is the reason we have to be careful. Laws? Why, I had a case not long ago in which a blank warrant was put on my table, and I was asked to sign it to deport a man who had lived in this country two years and eleven months. In one month more he would have been beyond the reach of the law. He had lived out in the West, and had a wife and six children. He was charged with having been convicted of a felony in a foreign country twenty-nine years ago. I looked at the record and it was complete. He had been convicted—he admitted it—and had served in the penitentiary. He had been in this country not quite three years, so he was not safe. All he did was to send me a picture of his wife and his children and himself, and then some of the people in the town where he lived sent me certificates as to the character and manner in which he had borne himself since he had been here. I pursued the inquiry contrary to strict law. I did not stay with the record, but I wanted to find out whether he was guilty or not. He told me he was not guilty. He gave me an explanation—I won't go into the details of the case—but he brought to his support the very men whom he was

supposed in his conviction to have injured. The very people who were presumed to be interested against him in the case in which he was convicted stood up for him and said he was innocent and they knew it. What I tell you about the case absolutely convinced me, and I refused to sign the warrant. Some official wanted to know how I could refuse to enforce the law when the law said that anybody who had been convicted of a felony on the other side, and who has not been here three years, must be deported. I said, "It does, but I won't sign it. That case is stale, is too old to notice." Of course, if he appeared to be a bad man he might have fared differently. I am satisfied he is not a bad man, I am satisfied that it was a mistake when it happened; I am satisfied that I am here to carry out the spirit, not the technical letter of the law.

I know the danger of that doctrine, of course; but I also know the danger of mere technical enforcement, the enforcement of the technical letter, and I must have inspectors who have some practical sense, and who will give their attention to the real cases, and not to ferreting out forgotten cases. I say to them, "You show me a general who goes nosing around the tents at night to see whether the boys are playing poker, and I will show you a general who never wins a battle." I take the responsibility of not sticking within the bark on this administration. I go beyond it constantly because I regard it as an administrative service in which the general purpose of the law is to be carried out. I do it to the best of my ability. I make mistakes every day. If I did not, the wheels would stop. But I ask you, instead of prodding or permitting men in your name to prod, co-operate with me. I need your assistance and the assistance of everybody who is interested in this general subject.

Now, treat it broadly. You are citizens of the United States, and I am. You are private citizens, I am an official. You have the right to indulge, of course, your personal views very much more than I, but we ought to co-operate. Your societies are, of course, carrying out your views, your individual views. They are of great service to their people, of course; but you cannot expect me in my official capacity to accept anything that they say. They stand very much in the character of advocates. Of course, I hear it said here that you are as much interested as anybody in not having the wrong people come in. I know you are; that is right; but I never had you call my attention to a wrong person yet. Now, that is a fair statement. I am not

complaining at all. I am speaking of the service, and we need co-operation and not fault-finding.

The way Mr. Wolf approaches us is calculated to get best results, because he comes to us fairly, good-naturedly; and when he is defeated he recognizes our point of view. That is the spirit in which you ought to come. We are trying to do it with all similar organizations, and you must keep in mind that an organization engaged in the protection of alien people naturally assumes the character of an advocate. It is bound to do it. It is human. We are all that way. And perhaps I naturally assume the position of an advocate, too, if you force me to do it; but, after all, I am the advocate of the United States, and I admit that is a pretty big proposition.

Now, finally, just let me say that we might as well, and I know we will, take the broad American view of this. We are all interested in the character of people that come; we are interested in having the right people enter; we all know that this country does not belong to any particular race, that was never intended to be, and cannot be. We are all making for a common type. We practically have it now, and our purpose must be to have that type represent, as far as conditions permit it, the strength and the virtue of every race that is represented, to the exclusion of every vice that we can keep out. That is the purpose of a free government; and of course you know, and I know, however generous we may be or want to be, ultimately the first point is to have this government continue to be a success, as an example of free institutions, and to permit no consideration, however it may appeal to us, to undermine that ultimate purpose, because upon the strength and success of these institutions depends the continuation of that haven to which all oppressed people look.

ILLITERACY OF JEWISH IMMIGRANTS AND ITS CAUSE*

Differences of opinion as to the extent of illiteracy among Jewish immigrants induced the National Jewish Immigration Council to appoint a special committee of investigation, which hereby reports the results of its investigations.

According to the report of the United States Immigration Commission (vol. 4, entitled "Emigration Conditions in Europe," p. 30, Table 15), the total illiteracy (inability to read or write any language or dialect) of Hebrew immigrants 14 years of age and over admitted into the United States in the fiscal years of 1899 to 1909, inclusive, was 25.1 per cent. In 1910, according to the report of the Commissioner General of Immigration of that year, the total Jewish illiteracy of admitted immigrants was 28.8 per cent; in 1911 it was 25.1 per cent; in 1912, 25 per cent; and in 1913, 21 per cent. Adding these four years to the period covered by the Government's figures we find that the total Jewish illiteracy for 1899 to 1913 was 25.1 per cent, thus maintaining the average up to 1909. The relative distribution of illiteracy between Jewish male and female immigrants over 14 years of age is indicated by the figures for 1912, when the percentage of illiteracy among males was about 16½ per cent and among females 33 per cent, the latter being twice as high as the former. According to the Russian census of 1897, which is the last one published, the total percentage of illiteracy of Jews in Russia, of persons 10 years of age or over for both sexes, was 49.9 per cent. The general illiteracy in Russia for all races and creeds, according to the same census, was much higher—72 per cent. (Emigration Conditions in Europe, p. 343.)

It is evident from a comparison of the illiteracy of Jewish immigrants who come to this country and of Jewish illiteracy in Russia (from which country the bulk of Jewish immigration comes) that the class of Jewish immigrants who arrive here is, in education, above the average shown by their coreligionists abroad. For if it were assumed that only the average Jewish immigrant comes to these shores, then we would expect to find a greater illiteracy prevailing amongst Jewish immigrants than the figures show. The Jewish immigrants

* Report of a Special Committee of the National Jewish Immigration Council, Max J. Kohler, Chairman, (U. S. Senate Document, 63d Congress, 2d Session No. 611, 1914).

who come to this country are thus shown to represent a higher educational standard than that evidenced by the average Jews in Russia. Notwithstanding this fact, the percentage of illiteracy amongst Jewish immigrants to this country is still, as has been shown, 25.1 per cent for the last 13 years.

While there was no disposition to doubt the accuracy of our Government's figures as to Jewish illiteracy, it was considered advisable to make an independent investigation of incoming immigrants with reference to their ability to read or write, specifically including Hebrew and Yiddish. These investigations were threefold: The first was under the direction of the Council of Jewish Women of New York City, which, through a trustworthy representative, interviewed 1,887 female immigrants immediately after their admission (March to June, 1913). The answers to questions as to literacy or illiteracy were noted on special cards printed for that purpose, which thereafter were compared with the Government figures. The great majority of the immigrants thus questioned were between the ages of 14 and 25, from which fact the inference might fairly be drawn that the degree of literacy would be higher than amongst females of all ages.

According to the Government figures, as noted on the steamship manifests, of these 1,887 female immigrants 17.3 per cent were illiterate, while, according to the investigation conducted by the Council of Jewish Women, the illiteracy shown was 15.4 per cent, substantially confirming the Government's figures regarding the same persons.

The second investigation was conducted by a qualified statistician, who was given the privilege of interviewing 240 Jewish immigrants who arrived at Ellis Island during the month of November, 1913. Of this number there were 130 male and 110 female immigrants. The investigator questioned these immigrants with the aid of publications in various languages and also utilized the Hebrew prayer book. The result of his inquiry summarized is as follows: Of 130 male immigrants the Government figures showed a total illiteracy of 12.3 per cent, while the investigator's figures showed a total illiteracy of 8.5 per cent; of 110 female immigrants the Government figures showed a total illiteracy of 18.2 per cent, while those of the special investigator showed an illiteracy of 25.4 per cent. In this cold month sturdier, and therefore younger, immigrants may be expected to emigrate than ordinarily, who are therefore also presumably better educated than summer arrivals.

Summarized, therefore, for 240 immigrants the steamship manifests

showed an illiteracy of 15 per cent, while the private investigation showed an illiteracy of 16.7 per cent.

In connection with the male illiteracy, as shown by the private investigation, it should be noted that 11 immigrants who could merely read the Hebrew prayer book were considered by the investigator to be illiterate, in order to conform with the provisions of the projected Burnett bill, but under which provision it is questionable whether a man who can only read the Hebrew prayer book would be considered literate. Similarly 8 of the female immigrants who could only read the Hebrew prayer book were considered by the investigator illiterate.

Explanation should be made of the causes for noting these 19 immigrants as illiterate. Reading the Hebrew prayer book partakes of the nature of a mechanical operation. It has been known that persons able to read the prayer book were not able to read the Hebrew language in any other form.

The third investigation was conducted by the Jewish Immigrants' Information Bureau, which interviewed at Galveston, Tex., 1,029 male immigrants and 255 female immigrants from July 7 to November 1, 1913, inclusive. The results of the inquiry were then compared with the Government figures, and the result follows: Of 1,029 male immigrants the bureau found that 15 per cent were totally illiterate, and the Government figures tally. Of 255 female immigrants the bureau found a total illiteracy of 39 per cent, while the Government figures show a total illiteracy of 40 per cent.

From March to June, 1913, a previous investigation had been made by this same bureau of 389 immigrants, of which 351 were male and 38 female. According to the bureau, of these 389 immigrants there was a total illiteracy of 14.7 per cent, while the Government figures showed an illiteracy of 17.5 per cent.

A study of the figures resulting from the three private investigations indicates that there is little or no deviation between the Government figures and those of the private investigations.

In noting that the entire Jewish illiteracy for 11 years, as shown by the commission, is 25.7 per cent, it should be taken into account that the relatively large proportion of female Jewish immigration to this country pushes up the total illiteracy rate, for it is a fact that the percentage of illiteracy is far greater amongst Jewish females than it is amongst males. On this point it might be interesting to mention that from 1899 to 1910 the Jewish female immigration was 43.4 per cent of the total Jewish immigration, while for that period

the total female immigration of all races was 30.5 per cent of the whole number of male and female immigrants.

This large Jewish female immigration is therefore a contributing cause to the prevailing rate of illiteracy amongst Jewish immigration in general.

An exemption in the literacy test with regard to Jewish females coming to certain specified near relatives would not be a material counterweighing influence because of the fact that the bulk of the female Jewish immigrants come without having parent or husband here.

The analysis of the illiteracy of Jewish immigrants would be incomplete without a study of the educational conditions prevailing in the countries where they come from. Selection has been made of Russia and Roumania because, first, as noted before, the bulk of Jewish immigration comes from those countries; and, secondly, because in those countries the Jew is a subject to religious and political persecutions of sweeping character, particularly affecting educational opportunities.

Concerning Russia, in addition to the legal and religious disabilities directed against the Jews, sweeping restrictions are also made debarring them from a full and free attendance in elementary schools. For example:

(a) The limitations of the number of Jewish pupils in secondary governmental schools is 10 per cent (statement by Jewish Colonization Association, 1910). Though not applicable to elementary schools, the rule is arbitrarily applied there, too. This limitation becomes all the more serious when it is noted that the facilities for elementary education in Russia permit only 40 out of every 1,000 in the entire Russian Empire to attend common schools (Encyclopedia of Pavlenkoff, 1910). The ratio in England is 176; Italy, 83; Germany, 158; France, 144. Scarcely any public schools were established in the sections where the Jews reside in numbers.

(b) The Jews in the Russian pale therefore were compelled at their own expense and initiative to found private schools to permit a larger proportion to get the benefits of a school education than the Government allowed. But the Government placed every obstacle in the way of their opening such private schools (report of officials of International Colonization Association to the United States Immigration Commission, vol. 4, p. 277), and increasing poverty further retards these efforts.

It is true that the Russian Government, in order to provide partially for the education of Jewish children who are debarred from general schools, founded a few special Government schools which depended

upon a very limited fund. The number of such schools at the end of the last century was determined to be 183, with an average of 113 pupils for each school, or a total of 20,679. (P. 344, vol. 4, United States Immigration Commission reports, quoting Dr. I. M. Rubinow's article on the "Economic conditions of the Jews in Russia," Bulletin of the United States Bureau of Labor, No. 72, September, 1907). The Jews therefore had to supplement these schools with the institution known as the "cheder." The cheder is a denominational school, the purpose of which is instruction in the Bible and Jewish religion and learning. According to the investigation of the Jewish Colonization Association in 1904 (p. 346, Dr. Rubinow's article, above quoted), which collated data from 507 localities with a Jewish population of 1,420,000, there were found 7,145 cheders. From this date the estimated total number of existing cheders was, at the time, 24,000. The average number of pupils to each cheder was found to be 13.7 per cent (according to investigation of the Imperial Russian Free Economic Society, page 345, above quoted article); therefore these 24,000 cheders evidently contained about 329,000 pupils. The total number of Jewish children of school age is, however, estimated by Dr. Rubinow to be more than 700,000. (P. 345, article above quoted).

Attention should be called to the fact that in these 507 districts investigated by the International Colonization Association only 8 per cent of Jewish girls were found to frequent the chederim, and in this connection it should be noted that the Russian Government opposes the creation of chederim for girls. (Economic Status of the Jews in Russia, published by the International Colonization Association, 1904).

Concerning the chederim, Dr. Rubinow notes (p. 346, above quoted article of Dr. I. N. Rubinow) that although the cheder has an important function to fulfill—

it does not follow that it does it in a satisfactory manner. * * * The methods are antiquated and the environments indescribably bad. * * * The air in the improvised schoolrooms has often been described as killing. * * * These objectionable features of the typical cheder are accentuated by the excessively long hours. * * * The school day begins at 9 a. m. and ends at 5, sometimes at 6, or even 8 p. m., so that the school day lasts anywhere from 8 to 11 hours.

(c) The American Jewish Yearbook annually compiles a list of events affecting Jews in various countries. From the yearbook of

1913, page 320, we find the following Russian educational restrictions directed against Jews:

August, 1912.—Many private schools are closed as a result of anti-Jewish circulars of the ministry of education.

September, 1912.—At Beredicheff no Jewish child admitted this year to local schools. At Brodsky, course for Jewish teachers prohibited from admitting those without right of residence. A member of Kiev education department orders that at Beredicheff, where Jews contribute 96 per cent of maintenance funds, no Jewish students be accepted, percentage norm having been exceeded.

March, 1913.—Ministry of education drafts new regulation providing that percentage norm shall be calculated on a basis of total number of students on roll at a school and not on total number of students admitted.

May, 1913.—Ministry of Education orders that vacancies for Jews according to percentage norm shall be filled by lot and not according to standing at entrance examination, as heretofore.

June, 1913.—Government commission considers the introduction of formal percentage norm in elementary schools for Jews.

July, 1911 (p. 151).—Revision of percentage norm of students to be admitted this year to educational institutions will result in total exclusion of Jews in many cases and admit only an insignificant number in others.

July, 1910 (p. 154).—Elementary schools hitherto not enforcing restrictions henceforth will admit Jews only in limited numbers.

(d) The Jewish Colonization Association of St. Petersburg in 1904 published a book on the economic status of the Jews in Russia, which book was the basis of Dr. Rubinow's article referred to in (b). In this publication the following is noted:

The principals of the public schools are often instructed by ministerial circulars to rigorously enforce the rules that all pupils should perform the written school exercises on Saturdays and on Jewish holidays.

The inference is therefore inevitable that on such days the attendance of Jewish children is considerably curtailed.

(e) That the public school system of Russia is inadequate is further indicated by the fact that the expenditures of the Russian Government for education amount to 3 per cent of its budget. (Encyclopedia of Pavlenkoff, 1910). On this point the following figures are interesting.

According to an article entitled "Education in Russia," by Prof. Simkhovitch, in the "Educational Review," May, 1907, in 1900 there were 84,544 elementary schools in the Russian Empire, with 172,494 teachers and 4,507,827 pupils. Out of this number 47.5 per cent of the schools were under the management of the ministry of education and 42½ per cent were parochial schools under the synod.

Ever increasing economic distress among the Jews in Russia makes it daily more difficult for Jews residing there to secure the funds necessary to provide instruction for their children even at the cheders which the Government permits to be maintained.

(f) The anti-Jewish educational discriminations in Russia have become so shocking that at a recent national educational congress held in St. Petersburg in January, 1914, rigorous resolutions of protest were adopted by the 6,000 teachers of all races and creeds who attended. These proceedings were reported in the "New York Evening Sun" of February 3, 1914, as follows:

EDUCATION FOR JEWS IN RUSSIA—TEACHERS' CONFERENCE FAVORS
IMPARTIALITY—GOVERNMENT OPPOSED—MANY IMPEDIMENTS
ENCOUNTERED BY PROGRESSIVES.

At the first all-Russian conference on primary education recently held in St. Petersburg it was resolved by the thousands of teachers and educationists who attended from all parts of the Empire that the Jewish inhabitants of Russia ought not to be discriminated against in the matter of education. The resolution adopted by the committee appointed to deal with the subject of schools for non-Russian races reads as follows:

"Whereas the right to education must be considered as inalienable, while the residential and educational restrictions practically deprive a large portion of the Jewish population of that right; and whereas the restrictive laws produce a demoralizing effect on both Jews and Christians, while their application is injurious from the point of view of the State and educational work, this conference advocates the abolition of the said restrictive laws for the Jewish population."

On the motion of M. Smirnoff another resolution condemning all manifestations of anti-Semitism in the schools and calling upon the teachers to counteract such tendencies was adopted.

The St. Petersburg correspondent of a London weekly writes that

attempts were made at first to "pack" the conference with members the St. Petersburg authorities thought were politically trustworthy. Says this correspondent:

"The fact that a teachers' conference could only be held this year for the first time sufficiently illustrates the attitude of the Russian Government toward primary education. But even on this occasion the conference could only obtain permission to meet owing to the accident that at the head of the organizing committee was Senator Mamontoff, a man of great influence through his personal and family connections. He alone was able to overcome the innumerable impediments placed by the bureaucracy in the way of the conference. At first the St. Petersburg authorities thought they would be able to keep the organization of the conference in their own hands and through their local agents to pack it with none but the politically 'trustworthy' elements of the teaching body. It soon became clear, however, that the idea of the conference had attracted the most liberally minded educationists in the most forlorn corners of the Empire and that a wholesale pilgrimage of teachers to St. Petersburg was to be expected during the holiday season.

"OFFICIAL IMPEDIMENTS.

"Then the bureaucracy radically changed its attitude toward the conference. Wherever the teachers were suspected of political 'untrustworthiness' the local authorities either refused them leave of absence altogether or accompanied their permission by such burdensome conditions that the journey to St. Petersburg proved impossible. One lady teacher from Tashkent, for instance, was promised leave on condition that she should start on January 4 and return by January 20. Since January 4 was the opening day of the conference, while the journey from Tashkent to St. Petersburg takes five days, the emptiness of this concession is obvious. At the same time the official Russia began to publish minatory articles warning the teachers that nothing in the way of politics would be allowed at the conference, which would be closed at the slightest attempt to overstep the limits imposed.

"But, in spite of everything, the conference was attended by over 6,000 teachers from every corner of Russia, and the spirit displayed by its members was one of pronounced antagonism to the Government."

MEMORANDUM FROM THE INTERNATIONAL COLONIZATION
ASSOCIATION, ST. PETERSBURG.

The rights of the Jewish subjects of Russia with reference to education, residence, and civil service are fixed not alone by laws, but by administrative regulations and by the good will of the authorities. Any change of officials (for example, in the ministry of culture and education) creates misgivings in the minds of the Jewish parents and their children and the fear that conditions may become worse. The welfare of the Jewish children of school age depends on the mood, the character, and the inclinations of the new officials. The administrators in the department of education invariably adjust themselves to the views of their superiors. The change in officials therefore results frequently in the closing of the doors of schools to Jewish children.

According to the census of 1897 the Jewish population of Russia constituted 4 per cent of the total population. The report of the minister of culture and education for 1911 shows the following statistics as to attendance in the State public schools:

Total number of pupils.....	4,746,736
Jewish pupils	69,358
Per cent of Jewish pupils.....	1.46

As a matter of fact the percentage of Jewish pupils is even less than 1.46 per cent, because a large number of Christian children attend the parochial schools, in which the number of Jewish pupils is negligible.

According to private investigations there were, in 1910, 920 special Jewish elementary schools (State, communal, and private schools). The number of pupils was about 90,000. Thus the total number of Jewish pupils in 1911 frequenting any form of elementary school under the supervision of the Government aggregated 170,000. Assuming that the Jewish population in Russia is 6,000,000 and that the percentage of Jewish children of school age is 9 out of every 100, we arrive at the conclusion that the number of Jewish pupils in schools ought to reach 540,000; as a matter of fact the number, as we have seen, is only 170,000. Therefore only 31.5 per cent of Jewish children attend elementary schools. We can not vouch for the absolute accuracy of the above figures because of the lack of satisfactory statistics with reference to matters of education in Russia. The material collected by the census of 1911 has not yet been published in its entirety. At this writing the result of the census is known only with regard to one educational district—that of Kiev. That district includes the Provinces of Kiev, Podolia, Wolina, Poltawa, and Czernigow. Although these

Provinces are within the Pale of Jewish settlement it should be noted that the percentage of Jewish population in these sections according to the census of 1897 is 9.8 per cent, while that of the northwest districts is 14.14 per cent and Russian Poland 14.68 per cent. Bearing in mind the above fact, the following are the figures for the Kiev educational district on January 1, 1911, according to the report of the minister of culture and education:

Schools	4,445
Total number of pupils.....	366,383
Jewish pupils	30,138
Per cent of Jewish pupils.....	9.5

And according to the report of the Orthodox church:

Parochial schools	5,843
Total number of pupils.....	318,153
Jewish pupils	2,671
Per cent of Jewish pupils.....	0.84
Total number of pupils.....	684,536
Total number of Jewish pupils.....	32,809
Total per cent of Jewish pupils.....	4.8

These figures are the more significant if we take into account the fact that the State public elementary schools exist mainly in cities and towns, and there the Jewish population is concentrated. According to the census of 1897 the percentage of Jewish population in the Kiev educational district is as follows:

	<i>Per Cent</i>
Beredichew	78.0
Kiev	12.9
Zhytomir	48.9
Krementschug	47.2
Uman	57.8
Kamenetz Podolsk	45.1
Kowno	56.1
Winnitza	38.2
Poltawa	20.4
Czerkassy	37.0
Czernygod	36.2

The following are the detailed statistics of pupils attending the State elementary schools according to the unpublished report of the procurator of the Kiev education district for 1911 (see the Bulletin of the Jewish Association of Instruction, 1912):

<i>Government</i>	<i>Total number of pupils</i>		<i>Jewish</i>		<i>Per cent Jewish</i>	
	<i>Boys</i>	<i>Girls</i>	<i>Boys</i>	<i>Girls</i>	<i>Boys</i>	<i>Girls</i>
Kiev	49,406	20,640	1,806	2,846	3.6	13.7
Podolia	31,422	9,499	649	1,078	2.0	11.3
Wohliner . . .	44,330	16,524	971	1,718	2.2	10.4
Czernigow ..	77,987	26,569	550	1,840	.7	6.9
Poltawa	93,453	27,128	541	1,303	.5	4.8
Total number						396,958
Jewish						13,302
Per cent of Jewish pupils						3.4

The above figures show that more Jewish boys are debarred from attending elementary schools than Jewish girls. This is due to the fact, on the one hand, that Christian girls are not eager to receive education in elementary schools and, on the other hand, is the outcome of a rigorous policy on the part of the authorities in the elementary schools not to admit, as far as possible, Jewish boys to school. The same rigor is not applied to Jewish girls.

We wish to point out that the procurator of the Kiev education district congratulates himself in his report of 1911 for having succeeded in reducing the percentage of Jewish population to 3.4 per cent, while in previous years the percentage had been higher.

Regarding private Jewish elementary schools, according to the census for 1911 there were in 19 Jewish State schools 3,482 pupils and in 75 Jewish communal schools 8,628 pupils, making a total of 12,110. It should be borne in mind that we do not here refer to the chederim registered and those which are not registered but exist de facto, nor chederim supported by private persons.

We get an inferential summary of pupils in Jewish private schools by subtracting from the total number of pupils in the elementary schools of the Kiev education district—to wit, 30,138—the number 25,412 (which represents 13,302 Jewish pupils in general elementary schools and 12,110 pupils in private Jewish State and communal schools), which leaves 4,726 pupils.

We will now take up the instructions of the school authorities, the purpose of which is to restrict as much as possible the admission of Jewish children to elementary schools. Unfortunately the Jewish subjects in Russia are frequently denied what the written law allows them.

Too frequently what is permitted and what is prohibited is but the humor or spleen of the officials and executive authorities. The establishment of new Jewish schools is almost entirely prohibited. For instance, the Jewish community of Kiev struggled from four to five years before it was permitted to establish an elementary school with a four years' course for Jewish children. The Jewish schools in existence are overcrowded. The admission of Jewish children to the general elementary schools is illusory. In addition, the number of elementary schools is limited. The authorities of the educational department are not favorably disposed to the ambition of the Jewish population to reform the chederim to bring them up to the standard of the ordinary elementary schools. The chederim are religious schools of a primitive nature. Hundreds of thousands of Jewish pupils spend the best years of their youth in these unsanitary chederim, in which the instruction lacks a pedagogical system, and in which nothing is learned except some knowledge of the Jewish religion. Reading is taught only to the extent of learning the prayers and religious texts.

The wisdom obtained by the Jewish children in these chederim is of small value, while the deplorable physical conditions of the chederim ruin them physically. Modernized Jewish people are anxious to reform them in every particular—to make the atmosphere hygienic and to introduce pedagogical methods. But they are handicapped by “rules, circulars, instructions, and ukases.” For example, as a rule nothing but the teaching of religion and religious laws is permitted; reading and writing is allowed, but only in so far as religious instruction requires. Teaching of general “profane” subjects, even in Yiddish, is strictly prohibited. The chederim must in no way be like the school. The following fact is of interest (see bulletin of the Jewish Association for Instruction No. 23, Sept., 1913): On April 17, 1903, the director of public schools of the Province of Mohilew permitted the Jewish community of Lukoml to establish a cheder providing for a teaching program to include the Russian language, writing, and arithmetic. On the strength of this permission this cheder was in existence for 11 years, and achieved such success that it developed into a regular school and owns its building. In May, 1913, the inspector of schools was on an inspection tour in Lukoml and learned that this cheder had acquired the character of a regular elementary school. He ordered it immediately closed. By this order 200 Jewish children were deprived of the opportunity of receiving an elementary education.

The following are additional facts illustrative of the policy of the Russian Government toward the Jews:

(1) Wolkowinzy, Province of Podolia: In this city there are 500 Jewish families and not a Jewish school. In 1903 an elementary school with a one-class course was established; the Jewish community granted this school 2,000 roubles out of the funds of the meat tax, on the condition that Jewish children be admitted to this school. As a matter of fact not one Jewish child was permitted to attend this school (bulletin of the Jewish Association for Instruction, Dec., 1910, No. 21).

(2) Swenjon, Province of Wilna: There are two schools for girls, one a parochial and the other a pre-gymnasium. Jewish girls are admitted only in rare exceptions.

(3) The city school commission of Kiev formulated new rules regulating the admission of pupils to the city schools. Upon the suggestion of the president of the committee Christian pupils have the preference of admission.

(4) Illinetz, Province of Wolina: At the beginning of the school year 6 Jews and 27 Christians were admitted to the local city school. It should be noted that the Jewish community of this town contributed 20,000 roubles to the school on condition that there should be no discrimination as to nationality in permitting admission to this school. In spite of the promise of the school authorities to agree to this provision a great number of Jewish children are refused admission.

(5) "The Kiev Post" reports:

Mr. Snosko-Borowsky, a member of the Zemstvo of Kanew and commissioner of education, visited the two-class school of Kanew. His attention was called to a Jewish girl, whom he addressed as follows:

"Well, Jewess, answer."

As the girl replied that she was a Russian girl, Mr. Snosko-Borowsky ordered that all the Jewish boys and girls of the schools should be shown to him. Naturally all the children became nervous and could not properly answer the questions asked them. Mr. Snosko-Borowsky as commissioner of education ordered that a list be made of all the Jewish pupils and suggested that they should be discharged.

(6) The Young Clerks' Jewish Association of Poltawa applied for permission to establish a Saturday evening school for adults. The application was rejected by the school authorities and no reason for this action was given.

(7) The Association for Propaganda of Instruction Among Jews applied for permission to establish an elementary high school for adults in Minsk. At first the application was rejected. The result of a personal interview was the promise that permission would be granted for a night school in connection with the existing State elementary school. The association renewed its application, accepting the above modification. Again the application was rejected for the only reason that the association wanted to connect the night school with the elementary school. A third request was also rejected because the governor of Minsk had not been requested to give his opinion and because the program proposed for the new school was not satisfactory.

(8) The Association for the Encouragement of Trade Among Schools applied for permission to establish a night school for carpenters in Zhytomir. The purpose of this school was to familiarize carpenters with the most advanced methods in their trade and to teach them painting and polishing of furniture, etc. The application was rejected and no cause given for this action.

(9) There is no law creating a percentage norm for the admission of Jewish children to the two-class elementary schools. Nevertheless Jewish children as a rule are not admitted to elementary schools in the government of Kowno.

The above citations are only a few examples chosen from a great many similar occurrences.

MEMORANDUM FROM THE ITO IN KIEV, RUSSIA

The right of attendance by Jewish children in Russian schools is not restricted so much by written laws as by the executive power of the imperial authorities, notably the minister of culture and education. The long series of circulars issued by the minister during the past 25 to 30 years have made the right of Jewish subjects to attend either State elementary schools or high schools, as well as universities and technical high schools, almost illusory. In many cases the circulars abrogate this right. Such restrictive circulars are published in the official journal of the Government, particularly in the bulletins of the minister of culture and education and in the Bulletin of Public Instruction. The percentage norm of Jewish subjects who are permitted to receive elementary education is determined in secret circulars directly distributed by the minister to the local authorities in charge of public instruction and to advisory boards of local municipalities. It is a fact that the authorities of those municipalities in

which Jews have no representation on the governing boards restrict the rights of Jews to a greater extent than intended by the ministerial circulars. Very often municipalities entirely close the doors of schools to Jewish children.

There are no restrictions in the general written laws debarring Jewish children from receiving elementary education. Section 966, volume 9, of the Russian Code reads as follows:

Children of Jewish parents are admitted to public governmental schools, as well as to private schools, without any discrimination in all cities where their parents are lawfully permitted to live.

Section 3146 of the code, volume 11, concerning schools under the supervision of the minister of culture, reads as follows:

Children not less than 7 years of age are admitted to municipal schools without discrimination as to social class or faith.

It is well known that these laws are but dead letters and that elementary instruction is also hedged about for Jewish children by restrictive decrees and ministerial circulars which nullify the above-mentioned laws. These circulars are never published; they are secretly directed to the respective authorities, and their publication is prohibited. One circular issued by the minister in 1911 prescribed that Jewish children be admitted to elementary schools only after the non-Jewish children who have applied for admission have been placed and when vacancies are thereafter left. This decree has been promptly carried out in all elementary Government or municipal schools. As the number of elementary schools in Russia is very small and cannot provide for all the non-Jewish children who make application for admission, there is no opportunity for Jewish children to receive education in primary schools. Thousands of Jewish children who so apply are rejected.

According to a statement issued by the minister of culture and education dated January 1, 1913, 143,566 pupils attended municipal elementary schools; of these only 10,206, or 7.1 per cent, were Jewish pupils. The governmental elementary schools (State schools) had a total enrollment of 541,741 pupils, of which 55,002, or 1.2 per cent, were Jewish. In cities of the Pale, where Jewish children form 70 per cent of the total population of children of school age, the number of Jewish pupils in the municipal elementary schools is from 13 to 28 per cent, and in the governmental schools only from 2 to 3 per cent. There is little doubt that as a consequence of the powerful anti-Semitic agitation the number of Jewish pupils in the State elementary schools is diminishing. In many State and municipal elementary schools Jewish

pupils are absolutely refused admission. The fact that under the law Jewish subjects are supposed to be permitted to run private and communal schools having the program of State schools does not ameliorate this condition, because it is very difficult for Jewish subjects to procure licenses to open such schools. Under these conditions it is not to be wondered at that Jewish illiteracy is high. According to the figures of the Commissioner General of Immigration of the United States for 1912, the percentage of Jewish illiteracy was 13.2 per cent for male and 25.1 per cent for female immigrants; the percentage of illiterate Poles was 29.1 per cent male and 32.7 per cent female; the percentage of illiterate Russians, 35.4 per cent male and 50 per cent female.

INSTRUCTION IN HIGH SCHOOLS, UNIVERSITIES AND PROVINCIAL SCHOOLS

The admission of Jews to high schools and universities is limited to a very low percentage. This percentage norm was fixed for high schools by circular No. 10313 of the minister of culture and education, dated June 10, 1887, and for universities by circular No. 6942 of the minister of culture and education, dated May 11, 1888. Such per cent limitations became a law in 1910. According to this law the percentage norm of Jewish students admitted to universities in capitals (St. Petersburg and Moscow) was fixed at 3 per cent of the total number of enrollment; in universities in cities not in the Pale of Jewish settlement, 5 per cent; universities within the Pale of settlement, 10 per cent. For high schools the following norm was established: In the capitals, 5 per cent; within the Pale, 15 per cent; outside the Pale, 10 per cent. It should be noted in this connection that the Jewish population in the cities of the Pale form 48.8 per cent of the total population, and in the districts of Russian Poland and southern Russia 62 per cent.

During the past two or three years the law of per cent limitations was extended also to professional schools, such as the school for nurses, the school for midwives, and musical institutions, for which schools there had hitherto been no percentage limitations. These professional schools are not largely attended by non-Jews, and the result ensued that such schools were practically unattended and were compelled to suspend through lack of students. In the years 1905 to 1908 the percentage limitation was not adhered to as rigorously as hitherto, and as a result the high schools and universities were attended by Jewish students in numbers far exceeding the per cent norm. However, the

minister of culture interpreted the law of 1910 to mean that the percentage of new Jewish students in the higher education should be not in proportion to the new non-Jewish students, but in proportion to the total number of students already attending the institutions in question. As a consequence, for many years large numbers of Jewish students were not admitted to many universities and high schools.

The admission of Jewish students to high schools and universities outside the Pale was further restricted by a circular of the minister of culture decreeing that Jewish students must first submit satisfactory evidence proving their right of residence in the localities in question.

In 1911 the law of percentage limitation was extended to those students who are called *externes*, that is students, who while not attending high schools wish to pass the examination of such schools. As there are only very few non-Jewish *externes*, the Jewish *externes* have almost no opportunity whatsoever of taking high school examinations.

LAW AND LIFE*

CONCERNING THE RIGHTS OF JEWISH SUBJECTS TO RECEIVE PUBLIC EDUCATION

The law makes no restrictions regarding the rights of Jewish children to receive elementary education. By referring to section 787, volume 9, of the Code of Civil Rights (edition 1909) it will be seen that Jewish children are permitted to attend Government elementary schools, private schools, and "pensions" in the same manner as children of any other nationalities. The only restriction is that such attendance is confined to those sections of the Empire where the parents of the children have established their right of residence. Education is compulsory for children whose parents are licensed merchants and titled citizens, in Government public schools, and in those sections where such schools are not in existence, then in private schools sanctioned by the Government. The above law receives constant repetition in varying forms of expression in many subdivisions of this code, and especially with reference to "gymnasiums," "real schools," elementary schools, and village schools (refer to secs. 1487, 1709, 3146, 3247, 3474, vol. 11, pt. 1 of the Consolidated Code).

In all these sections it is clearly stated that all children are to be admitted to the above schools without distinction of race, creed, or social standing. It might therefore be assumed from these liberal

*Paper read by Mr. Goldberg, of the Russian bar, before the National Educational Congress in St. Petersburg, January, 1910.

laws that the doors of all educational institutions are open to Jewish children. Moreover, the law compels the attendance of children in these schools, and in those sections where there are no governmental schools the Jews are permitted to establish private schools under the supervision of the Government. If the above laws were literally carried out, then the Jewish children would receive elementary education in the same proportion as children of other nationalities; but it must regretfully be stated that the law is not carried out and that the mere fact that a Jewish child applies for admission to a school is sufficient for the authorities to place restrictions in the way of his entrance. In order to demonstrate this fact, data was collected from the "Journal Concerning Public Education," published during the last three years. This journal is published by the Society for the Extension of Education Amongst Jewish Children in Russia, and is recognized as authoritative. The following are specific items:

(1) Beredichev: It need hardly be stated that the majority of the population in this city are Jews, and according to the official statistics 90 per cent of its population is Jewish. In that city there are two grades of city schools. The city income is derived primarily from the Jewish population. It would therefore be justifiable to infer that not only should Jewish children attend these schools by the rights given them by the laws above quoted, but also by reason of the superiority of population and of the fact that the largest part of the budget is made up by Jews. Nevertheless, in the year 1911 there existed in that city 103 vacancies in its public schools, and the surprising fact is to be noted that not a single Jewish child was drawn on to fill any of them.

(2) Staro Constantinow, Province of Volina: Jewish population, 56.5 per cent. In the years 1909, 1910, and 1911 no Jewish children were admitted to any of the Government schools in that city.

(3) Proskurow, Province of Podolsk: Jewish population, 80 per cent. The city schools are maintained exclusively by the income derived from the Jewish population. In 1911 not only was admittance refused to Jewish children, but 20 Jewish pupils who had previously attended the Government schools were discharged. In the year 1912 not a single Jewish child was admitted to the Government schools.

(4) Kiev: The municipality receives annually the sum of 15,000 rubles from the meat tax imposed on the Jewish population, which money is applied to the support of the city Government schools.

Nevertheless, Jewish children are practically debarred from attendance at such schools on the pretext that no vacancies exist.

(5) Ilinsch, Province of Kiev: The Jewish population contributed the sum of 10,000 rubles toward the opening of a city school on condition that Jewish children be admitted to it in the same proportion as children of other nationalities. The municipality accepted this donation but did not fulfill the condition under which it was given, and while 27 Christians were admitted to this school only 6 Jewish children were admitted.

(6) (a) Litin, Province of Podolsk; (b) Dubna, Province of Volina: In the year 1912 not a single Jewish child was admitted to any of the city schools in any of these places, in spite of the fact that in both cities the Jewish population is at least 50 per cent of the total population.

(7) Minsk: In the year 1913 thousands of Jewish children who made application for admittance to the city schools were rejected.

(8) Starodub, Province of Chernigow: Twelve Jewish children successfully passed the entrance examination and only two were admitted.

(9) In the Province of Kovno hundreds of Jewish children were denied admittance to the city schools in 1913.

From the above facts the utter disregard of the law pertaining to the admittance of Jewish children in city schools may be seen. The school executives are autocratic, and in their attitude place personal wishes and whims above the written law. To combat this attitude is futile, because it receives the sanction of their superiors. There are many instances where this unjust attitude on the part of the school executives results in their receiving promotion or recognition in some form. There is no court of appeals in this matter. By the time the complaint that may be made on this score migrates from department to department in the Government labyrinth, the Jewish child is already grown up. In those rare instances where the complaint receives favorable disposition, so long a period has elapsed until the decision is made that the Jewish child has already passed the stage of elementary education.

The only effective remedy would be to appeal to the Russian people directly and to so brand this injustice and hostility to the Jews that Russia will be humiliated and measures of relief will be taken. Then it may be that the law which is now a dead letter will be resurrected. It will undoubtedly be argued, Why should the Jewish children press

their right of admission to Government schools when the Jews have schools of their own throughout the Pale? And this objection sounds all the more plausible in the face of the privilege given to Jews to open private schools, as prescribed in section 790, volume 9, Code of Civil Rights. In this section it is clearly stated:

The Jews are privileged to establish private schools in which their children may receive education in matters scientific and religious.

It must be remembered, however, that the expenditure in establishing such schools is so large and that the economic status of the Jews in Russia is so unfavorable as practically to nullify this right. The pogroms of 1905, the increased persecutions of recent years, have forced the healthiest and most resourceful of the Jews to leave Russia, and as a result many villages will be found in which the Jewish population has been depleted of its healthy stock. In those localities where the Jewish population attempts to establish private schools the long delay which ensues on the application saps the energy and the vitality of the Jews. Even those who are most enthusiastic in agitating for private schools of this kind are compelled for this reason to weaken and perhaps to become indifferent. Moreover, there are thousands upon thousands of cases which will conclusively demonstrate that the efforts to establish Jewish private schools are frustrated at every turn. The following are some concrete examples:

(1) In the city of Attace, county of Sorok, for three years a teacher endeavored to receive permission for the opening of a private school of three grades, and finally received answer from the school inspector of Sorok that permission is granted to open this school, but he must first become expert in caligraphy and penmanship.

(2) In the city of Lutsk, Province of Volina: The Jewish community submitted a petition to the district supervisor of schools for permission to open a school in that city. Their petition was declined, and no reason was given for this action.

(3) Yaltushk, Province of Podolsk: Two petitions to open an elementary school with a Talmud Torah division were successively rejected, despite the fact that this community offered to give as security the yearly sum of 1,725 roubles that the school would be properly maintained. It should be noted in this case that the rejections were received three years subsequent to the filing of the petition. Similar rejections were made of petitions submitted by the Jewish community

of Svantschach, Rakitin, Balto, and other cities in the Province of Podolsk.

(4) Dagda, Province of Vitebsk: Over two years ago the Jewish community of this city made petition to open a private school, and that petition is still pending, in spite of the fact that in the community there are 200 Jewish children of school age who are without any facilities for receiving elementary education.

Similar instances in overwhelmingly large numbers can be quoted. The above facts will suffice to prove that in spite of the privilege accorded Jewish communities to open private schools Jewish children are practically left without any means of receiving education in any form. From every part of the empire can be heard the cry of Jewish children for education.

The situation with reference to Jewish children living outside of the Pale is no better. While it is true that in those localities the law permits them to receive education equally with children of other nationalities, still this law is regarded with the same contempt as it is in the provinces of the Pale. It may also be remarked here that it must not be assumed that when the authorities grant the petitions of Jewish communities to open schools that such schools are thereafter established, for a problem immediately confronts the Jewish community to find teachers for the school. Considering that the right of residence of Jewish pupils is restricted and that in the localities outside the Pale no Jewish teacher is permitted residence, it will be seen that schools in such localities can not be opened for lack of teachers. This restriction of the rights of residence of Jewish teachers is not in accordance with any written law, but is promulgated by ministerial circulars and underground decrees. Here is a conspicuous case:

The Jewish community of Kiev filed petition to open two Talmud Torahs in Kiev in 1909. The governor general of Kiev, as well as the municipality, gave to this petition their moral sympathy. But opposition developed in the department of education and the petition practically was transferred from department to department until it reached the minister of culture and public education. After a long period of further delays he granted the petition. In order to put into execution the favorable decision of the minister, the matter was placed in the hands of the district supervisor, who, angered by the fact that the petition was carried above his head, buried the matter in his office files until 1911. When at length this supervisor in 1911 gave permis-

sion for the opening of the school in question, the Jewish community found that it could not procure the services of Jewish teachers because the right of residence was denied them in that city. The case was then dropped. By persistent inquiry and search the Kiev community was enabled to locate a Jewish teacher with the right of residence and the school was opened. And the school, which had facilities for 400 children, was opened with 25 pupils and 1 teacher. By persistent struggle the Jewish community in Kiev, by the end of 1912, was given the privilege of having a few more Jewish teachers added to the school, on the condition that such additional teachers should live in a Province remote from Kiev, and the further restriction that such teachers should at the end of the day's work repair to that remote Province, viz. Slobodka. In comparison with the experiences of other communities in the matter of establishing private schools, the Kiev community is to be congratulated on the notable success it achieved.

CHEDERIM

As is well known, the teachers of the chederim are called "melameds." Their rights are regulated by a special law of March 1, 1893, and confirmed by the minister of public education, September 5 of the same year. This confirmation was only temporary, but has remained in force up to this writing. According to this law these teachers are permitted to teach the pupils matters of religion and reading and writing in Yiddish. License must be procured before chederim can be established and such license is given the melameds without any examination. According to this law, it would seem that everyone has the right to open a cheder; but this law was practically nullified by a secret decree which declared that everything taught in the chederim must be in the Russian language. There are many cases which show that melameds were prosecuted because Russian grammars were found in the chederim, and they were convicted under section 1052, volume 1, because they secretly taught the Russian language. Is it not irony that men should be prosecuted for teaching the language of their country?

It should also be noted that the Talmud Torah enrolls a large number of Jewish children who have no knowledge of the Russian language and the teachers are compelled to speak to them in Yiddish. Notwithstanding this fact the teachers are prosecuted if Yiddish is spoken in the chederim. Another restriction must be pointed out. The law does

not permit male and female pupils to be in the same room. Inasmuch as many chederim consist of one room only, this restriction results in the barring of many children from receiving education in any form. The law providing for this restriction was passed 70 years ago, and has become so long-lived because it is hostile to the Jews. It should be noted that modern laws which are more favorable to the Jews are utterly disregarded, while this ancient law is still vigorously enforced. Circular April 10, 1909, No. 8502, was explained by the minister of public education as follows:

Permission may be granted for children of both sexes to be in the same room only in special instances and the minister is the only one empowered to grant that privilege. Many petitions requesting this privilege have been filed, but are still pending, and there is no hope that action will ever be taken on them. This circular of the minister is all the more arbitrary and unjust in the light of section 3877, volume 11, part 1, of the Code of Civil Rights, wherein it is plainly stated that Jewish children of both sexes may receive education in the same room.

Attention is now directed to another class of schools the establishment of which the law permits. These schools are known as elementary schools. Such schools must be supported only by the Jewish community. Such schools must teach arithmetic, history, and geography, also Jewish religion and Jewish history, and Jewish prayers may also be taught. The course extends over a period of six years. Of such schools there are 64 in existence. It should be noted that these schools are supported mainly from the candle and meat taxes. The candle tax is an imposition of 1 ruble for every candle lighted by Jews Friday night. The meat tax is an imposition of 14 kopecks on every pound of kosher meat purchased by Jews. According to the law, it is expressly stated that these taxes are to be applied only toward the teaching of Jewish education and Jewish history, and not for any other subjects. But in reality the money is not so applied, and it has never been used for education in Jewish religion and Jewish history. They are expended on subjects not in any way relating to Jewish matters. In order to demonstrate this fact the following cases are given, illustrating to what uses the candle and meat taxes are put. There were 12 counties in the Province of Wolinsk in 1910-11. From these taxes there was an income of 325,967 rubles and 10 kopecks. This sum was expended in the following manner:

	RUBLES
(1) For maintaining the fire department.....	9,276.00
(2) For freight of governmental supplies.....	2,246.00
(3) Applied to the debts of churches and monasteries.....	1,009.00
(4) Toward maintenance of police departments.....	1,092.00
(5) The salaries of sheriffs serving summonses on Jews...	13,000.00
(6) Contribution to the board of governors, Wolina.....	15,000.00
(7) Toward maintenance of office, the governor of Wolina.	2,000.00
(8) To the publication committee of Moscow.....	135.45
(9) Toward the Government Bulletin of St. Petersburg..	281.00
(9) Toward the Government Bulletin of St. Petersburg....	281.90
(10) To printing office, Wolina.....	3,304.00
(11) For printing official announcements of meat and candle tax	1,450.00
(12) Advertising the days for tax collection.....	3,000.00
(13) For compiling tax lists.....	300.00
(14) To printing office, Wolina.....	250.00
(15) To stationery and miscellaneous, Wolina office.....	1,500.00
(16) To stationery and miscellaneous, Wolina office.....	4,452.00
(17) Repairing highways	12,452.42
(18) For cleaning market places.....	2,241.90
(19) Contribution to municipality.....	6,872.00
(20) Contribution to surrogate's court.....	395.00
(21) Repairs of sidewalks.....	310.00
(22) Contribution to city schools (in which there is no Jewish attendance)	600.00
(23) Postal and telegraph office.....	125.00

From the above it can be seen in what manner the money is spent and the utter disregard of the original purposes for which the taxes were intended. We see how the Jews of the Province of Wolina support the printing office which issues anti-Semitic literature; maintains the police, which is hostile to them; pays the sheriffs for summonses served on them, and are dragged into court to establish right of residence. From all the moneys collected from these two taxes in the Province of Wolina the Jews receive the benefit of only 9 per cent of the sum.

In the Province of Kiev the meat tax for 131 places reached 315,000 rubles. From this sum the following items were spent:

	RUBLES
(1) For Government purposes.....	44,000.00
(2) To the municipality	6,600.00
(3) For transportation of prisoners	2,293.00
(4) For night patrols	2,116.00
(5) For the village police	20,510.00
(6) For cleaning sewers and streets	6,500.00
(7) For repairing highways	6,061.00
(8) For miscellaneous Government expenses	6,061.00
(9) For vaccination (health department).....	448.00

Aside from the above items, part of the tax was expended for orphan asylums (non-Jewish), for maintaining fire departments, for maintaining stations for prisoners, for repairing sidewalks, for police administration and clerks, for churches, for lighting streets, for ice supplies, for supporting schools intermediate between primary and high school, for hiring police armories, and for clothing the policemen's servants.

The foregoing will show what burdens are imposed on the Kiev Jewish community in addition to the regular taxes, which all portions of the population must pay. From the 315,000 roubles collected on the two taxes the Jewish community receives the benefit of only 10 per cent of this amount. (Balance of the memorandum relates to high schools).

EDUCATIONAL LAWS OF ROUMANIA DISABLING FOREIGN CHILDREN* FROM ATTENDING PRIMARY SCHOOLS, 1887-1900

Law, July, 1887.—If the number of enrolled pupils is so great as not to be within the limitations of the schools, preference shall be given to children whose parents are Roumanian born or naturalized, and if this number shall exceed the limitations, Roumanian children shall be enrolled in the order of their application. If, after the admission of all Roumanian children, there still remains a number of vacant places, they may be utilized by children of foreign nationalities, in the order of their application and in accordance with the limitations existing.

Effect: Many Jewish children refused admittance; at Botoschani alone 114 Jewish pupils were sent back notwithstanding the fact that

*The phrase "foreign children" means children of all those not Roumanian citizens, and citizenship is denied to native-born Jews, with the exception of a very few able to secure special laws naturalizing them specifically.

these pupils were noted for zeal, intelligence, and progress. The same in Piatra, Galatz, etc. From 1888 to 1893 much agitation, but no definite laws.

Law, May 23 to June 4, 1893.—All foreign children must pay a tax of 15 francs for rural schools and 30 francs for city schools.

Effect: Many Jewish children were excluded because there were no vacancies under the law of limitation, still others could not pay the tuition fee, while a great number were excluded simply owing to the caprice of the directors.

Statistics: Jewish school children, 1891 to 1892, 19,577 Jewish out of 24,116 foreign children. Of Roumanian children there were 51,786.

Law, 1896.—Article 1: Instruction in primary schools is obligatory and free for all Roumanians.

Article 2: Certificates, documents, etc., relating to primary-school instruction are exempt from the stamp tax.

Article 3: Foreigners, excepting those who are established in Dobroudja, must pay a tuition fee fixed by the rule applying in the existing law. The minister in exceptional cases may, at his discretion, exempt foreign children from this tuition fee.

Article 4: If the number of pupils applying exceed the number of available places, preference shall in all cases be given to Roumanian children.

Ministerial decision, June 6, 1896, aggravating the law: Not exempt from stamp tax are all kinds of demands, documents, certificates, etc., addressed to directors of schools or school authorities by foreign children attending primary school or foreign children receiving home preparation or foreign children attending private institutions.

It is not permitted that collective petitions be made by the direction of the directors of Jewish schools; every petition must have as many stamps as there are pupils in the Jewish schools from which the petition emanates.

Ministerial decree, June 8, 1896.—Article 22: Only Roumanian children are exempt from paying an examination tax. Jewish children must in all cases pay such tax, and the poor are not exempt from this regulation.

Circular, No. 50183, September, 1898: The actual state of things makes the question not one of providing places for foreign children—the situation at present is that the vacant places can not accommodate even one-half of the Roumanian children. (Note that at the time there were 106,826 Roumanian children).

Statistics: In 1896 the number of Jewish pupils in public schools represented $5\frac{1}{2}$ per cent of the total enrollment, while, as stated previously, in 1891-2 the number represented 16 per cent.

Effect of laws, circulars, and decrees of 1896: Large masses of foreigners, expecting only the worst, refrained from even making an attempt to have their children provided with public instruction in primary schools. The teachers in the various schools baited and mocked Jewish children.

PART II, SECONDARY EDUCATION

Law, 1898.—Article 2: Instruction in secondary and superior schools is gratuitous for all Roumanian children. Foreign children may be admitted to such schools only on the condition that there are available places left after providing for all Roumanian children. In the event that such vacancies can be found, foreign children must pay a tax, to be fixed by a definite rule for each school. The minister may exempt such pupils as he deems worthy from taxation.

Statistics: In 1895 to 1896 Jewish pupils in secondary schools constituted $10\frac{1}{2}$ per cent of the total enrollment. In 1896 to 1897 the number amounted to 11 per cent, and in 1898 to 1899 the number decreased to $7\frac{1}{2}$ per cent. One of the great factors for this reduced percentage was the economic condition of the majority of the Jewish people in Roumania. To pay a tax was an insuperable obstacle in most cases, and the minister very rarely exempted Jewish people from the tax.

PART III

With reference to the exclusion laws regarding professional schools, in some schools there is a total exclusion of Jews and in some there is the tax and percentage basis. The tax is 90 francs for professional schools and 150 francs for commercial schools. Regarding agricultural schools, the conditions were made so vexatious and complex as to result in the practical exclusion of all Jewish pupils. Finally Jewish pupils are excluded from normal schools and from the marine school.

ADDENDUM

In the face of all these accumulative restrictions the Jews never lost heart, and in order to prevent their children from becoming totally ignorant they were compelled to rely on their own schools. But even regarding such schools the Government saw fit to adapt qualifying measures. For example, circular No. 355 of April 4, 1900, of the

minister of public instruction, compelled all Jewish schools to give instruction on the Sabbath.

EDUCATIONAL LAWS OF ROUMANIA DISABLING FOREIGN CHILDREN
FROM ATTENDING PRIMARY SCHOOLS, 1898-1913

Law, July 5, 1900.—Article 1: Instruction in primary schools is obligatory and free for Roumanians.

Article 2: All certificates or documents relating to primary instruction are exempted from the stamp tax.

Article 3: Parents or guardians of children born in Roumania are obliged to send them to the public primary schools from the age of 7 to 14, inclusive. Those parents or guardians of Roumanian children who can prove that they give their children an equivalent to the studies in public primary schools, either at home or in private institutions recognized by the Government, are exempt from this application.

Article 4: Children of foreigners, except those living in Dobroudja, will pay a tuition fee for entrance into public primary schools, to be regulated by the application of the present law. The minister of public instruction is given the discretion to waive this regulation whenever he sees fit.

Article 5: In the event that the number of seats in a public primary school shall be insufficient to seat all children of school age, the children of Roumanians shall in all cases receive the preference.

Article 15 (concerning rural schools): In those rural towns where there is a scarcity of appropriate buildings for primary-school purposes, foreign children are excluded, and only those Roumanian children may be admitted who belong to one of the following three categories: (1) Those Roumanian children who have of their own volition registered at the beginning of the school year; (2) those who are the smaller children in large families; (3) those Roumanian children whose homes are nearest to the schools.

Article 36 (concerning the pedagogical institute, otherwise known as the normal school): Only Roumanians may be admitted to these schools.

Law, August 28, 1901.—Reaffirms all the provisions cited from the law of July 5, 1900, merely modifies certain administrative functions.

Law, May 9, 1902.—Regulations concerning the examinations for entrants into higher courses of pupils prepared at home or in private institutions recognized by the Government.

Children of Roumanians who have prepared themselves in private schools recognized by the Government or in charity schools where

instruction is free or for a normal cost are exempt from the payment of an examination tax. This does not apply to children of foreigners.

EDUCATIONAL LAWS OF ROUMANIA DISABLING FOREIGNERS FROM
ATTENDING PROFESSIONAL SCHOOLS, 1900-1913

Law, August 29, 1901.—Article 3: Instruction in public professional schools is free for the sons of Roumanians. The sons of foreigners will have to pay a tuition fee which will be fixed by the regulations for each school, and such tuition fees will be turned over to the treasurer of the school. In the case of deserving or poor sons of foreigners, the minister has the right to dispense partly or totally with this regulation. In no case shall the number of foreigners admitted to these schools be more than the fifth part of the total enrolled.

Respectfully submitted, February 4, 1914.

HERMAN BERNSTEIN,
ISAAC A. HOURWICH,
JOSEPH JACOBS,
SAMUEL JOSEPH,
I. IRVING LIPSITCH,
SAMUEL MASON,
I. M. RUBINOW,
ABRAHAM SOLOMON,
HELEN WINKLER,
MAX J. KOHLER (*chairman*),
DAVID M. BRESSLER (*secretary*),
Committee.

JEWISH IMMIGRATION TO THE UNITED STATES*

This is a valuable and scientific contribution to what the author correctly describes as a movement which "has almost reached the dignity of the migration of a people", and has brought to our shores about 1,562,800 Jews, nearly all from Russia, Roumania, and Austria-Hungary, between the years 1881 and 1910. That we can now quite closely estimate its extent is due largely to Dr. Joseph's discovery and use of the figures contained in some early Jewish annual reports, antedating 1899, when the government began to classify Jewish immigrants as such, and to able estimates of his own, reducing earlier estimates materially.

Dr. Joseph divides his work into two sections, the first half being devoted to The Causes of Jewish Emigration, in the form of a study of conditions in the three European countries named, which have led to this Jewish immigration, and to the status and characteristics of the Jewish emigrant in his European home; and the second half to Jewish Immigration to the United States, being a very valuable statistical and comparative study of the Jewish immigrant arriving here. Part I is concise, accurate, and penetrating, and contains valuable material not heretofore conveniently accessible, especially not in English. In fact, the reader may well be disposed at first to doubt the place here of such an elaborate study of the history of Russia, Roumania, and Galicia of the past thirty-five years, in its bearings on their Jewish population; but when he reaches the second part of the work he finds how illuminating the statistics become in the light of this earlier section and cross-references to it.

That this Jewish immigration is due primarily to governmental persecution in Russia and Roumania, and is conditioned almost wholly by the ebb and flow of discriminatory laws, persecutions and pogroms, clearly appears from Mr. Joseph's book. Even the illiteracy of Jewish immigrants is shown to stand in close relationship to oppressive and increasing restrictions upon Jewish education in Russia and Roumania¹. Dr. Joseph's objective and scientific study ought to fill a great need in

* Jewish Immigration to the United States from 1881 to 1910. By Samuel Joseph, Columbia University Studies in History, Economics and Public Law, LIX, 4. (New York: Longmans, Green & Co., 1914, pp. 209, \$1.50)

(From "Amer. Economic Review", Vol. 5, March, pp. 123-125, 1915)

¹ See further as to this, Senate Document No. 611, 63d Cong., 2d Sess.

overcoming unwarranted assumptions of fact. Typical is his correction of Professor Ross' recently published statement regarding the supposed "emigration of 50,000 Roumanian Jews between January and August, 1900", "brought about by steamship agents who created great excitement in Roumania by distributing glowing circulars about America". Dr. Joseph points out, first, that only 6,183 Roumanian Jews arrived in the United States in the whole of the year 1900, and during the entire twelve years from 1899 on, less than 55,000; and that, on the other hand, there is not only no proof of the supposed machinations of the steamship agents in Roumania at the period stated, but that contemporary records show that the movement was due to a new outbreak of Roumanian anti-Semitism.

The second section, dealing with Jewish immigration to America is subdivided into two parts; first, Its Movement, treating of the numbers, source, and immediate occasion for the migration; second, Its Characteristics, with respect to family movement, permanent settlement, occupations, illiteracy, and destination. Large masses of statistics, chiefly collected by the Immigration Commission, are handled in a painstaking and truly illuminating manner, and Dr. Joseph shows how this Jewish immigration is far more a "family movement" than even the "old immigration" of the past few decades was, that its return movement is smaller than any other, and that it embraces a "larger relative proportion and absolute number of skilled laborers" than is furnished by any other immigrant people, a fact heretofore commonly overlooked. He also points out that the larger proportion of occupationless wives and children constituting this Jewish migration makes it all the more difficult for the male bread-winner to avoid economic stress here, a factor which would have acquired still more support, had he analyzed the government figures with respect to the relatively smaller amount of money brought over by the Jewish immigrants. On the other hand, such *a priori* inferences are completely rebutted by an analysis of the Immigration Commission's statistics as to immigrants becoming public charges, and by the reports of Jewish private charities, all showing that the Jewish immigrant becomes a public or a private charge in far fewer instances than the average immigrant, that this burden is in fact *decreasing* with the increased immigration, and is so small as to be relatively negligible.

Dr. Joseph practically ignores, however, the many institutions and agencies, which the United States, and especially the Jews here, have established and constantly extended, for the distribution of the immi-

grant, his Americanization and aid, and acquisition of the art of self-help, which other races enjoy only within smaller limits, and which make it comparatively easy within this decade, to assimilate per annum a hundred thousand Jews, while before their establishment, in the eighties, it was difficult to provide for 20,000.

A MIS-DESCRIPTION OF THE IMMIGRANT JEW*

The articles entitled "The Jews in America," which Burton J. Hendrick contributed to successive numbers of "The World's Work," beginning with the issue for December, 1922**, have been extensively advertised, and have attracted considerable attention. Their sensational and reckless style—a reversion to their author's original "yellow journal" manner, which some of his readers had hoped the author of "The Life and Letters of Walter H. Page" had permanently dropped—lends itself well to such advertising on the part of that periodical, of which he is an "Associate Editor," and in which some of the wildest and most recklessly erroneous statements were given special fresh emphasis.

A mere cursory examination by any one familiar with the subject, brings to light the sensational underlying purpose and bias, the lack of thorough study, the large aggregation of erroneous one-sided and misleading statements and the extraordinary contradictions made at short intervals which deprive the articles of real substantial value. The present is not the author's first struggle with his topic, though in this instance, sixteen years of "development" have not added to his knowledge of his subject, and certainly have not brought with them either judgment or poise.

That rare human being who can recall a magazine article of sixteen years ago may vaguely remember an article by our author in "McClure's Magazine" for January, 1907, in which his characteristic sensationalism expressed itself chiefly in the caption, "The Great Jewish Invasion," which is the chief refrain of his present song, too. In that instance, a movement which led about a million and a half of peaceful, conscientious and liberty-loving fugitives from Russian and Roumanian persecution to this blessed land of promise and hallowed asylum of the oppressed, induced by substantially the same motives as influenced Pilgrim, Puritan and Huguenot to migrate here two or three centuries ago, was suddenly transformed into an "invasion" of our land. Both then and now, the thoughtful and impartial utterances of distinguished Christian students of this Russian-Jewish movement, like Andrew D. White, Tolstoi, Wm.

* From *The B'nai B'rith News*, March, 1923, and *American Hebrew* of Feb. 23rd and March 2nd and 9th, 1923.

** Subsequently published in book form with the title "The Jews in America." (1923).

E. H. Lecky, Leroy-Beaulieu, James Bryce, Grover Cleveland, Theodore Roosevelt, President Eliot and Wm. H. Taft are utterly ignored, and the result is a one-sided, biased, sensational and reckless "indictment of a whole nation"—"nation," to adopt for the moment our author's claim that the Russian and Polish Jews constitute a different race than the Jews from the Iberian Peninsula and Germany.

One will also search in vain for any application of his reference to the underlying motive of this greatest exodus in modern history, clearly formulated at the start in the statement of the Chief Procurator of the Holy Russian Synod Pobedonostzeff, the "Torquemada of Modern Times," that Russia's adoption of his policy will drive one-third of her Jews into exile, another third to starvation and the remainder into the bosom of the Holy Russian Church! The first part of the prophecy was fulfilled, much also of the second. Would not such a motive for escape by emigration to a land of promise have sanctified doubly the immigration of the Puritans, if they had had even greater foibles and weaknesses than the Russian Jews, in the historical chronicle with proper perspective, on treating a Christian exodus a few centuries hence? Nor will any thinking man condemn a race as a whole as crass materialists, that is ready to bring such sacrifices for the sake of sacred convictions! But as to this charge, more anon.

Mr. Hendrick gives an ingenuous appearance of specious fairness and impartiality to his narrative, by reserving mainly for the last instalment his anti-Semitic attack on the Russian Jew, which tactics are further designed to pat the uninitiated Portuguese and German Jews on the back as a different species, and win a possible rash assent from some of them. Some of us, however, may remember the employment of similar methods four decades ago by the A. T. Stewart-Hilton coterie at Saratoga, when the Portuguese Jews were expressly excepted from the then freshly-penned "summer-hotel" indictment of the German Jews in America. According to Mr. Hendrick, however, the Jews of German extraction in America have now "arrived" and become assimilated, and deserve a place alongside of their Portuguese brethren and of the other "old immigrants" who came over here in force before 1880, and his ire is visited on the Russian Jewish immigrants instead, with much emphasis on what in effect is merely their lack of superficial conventions and other circumstances of little real moment, which are daily righting themselves more and more, and which in this particular instance are nowadays being systematically eliminated as never before with respect to any group

of new-comers to America, chiefly through the efforts of fellow-Jews themselves.

The present writer is wholly of German-Jewish extraction, and holds no brief for the Russian Jew; unlike Mr. Hendrick, however, he knows, enough of Jewish history to concede that similar indictments were made against the German Jews of the pre-Mendelssohnian period, and confessed, even by the leaders of Jewish emancipation of that day, when Western Jews in turn, were at last succeeding with similar energy, in emerging from the gloomy, evil European Ghettoes of their day. We have also not forgotten the old story about the "only good Indian being the dead Indian," and can understand the thread-bare claim that the immigrant who no longer comes over,—similarly reviled in his day, whether German Jew, Irishman or German—is suddenly posthumously endowed with a monopoly of all the virtues, while the substantially similar immigrant of our day is characterized as sordid, vicious and unassimilable. This is the real underlying and but thinly-disguised purpose of the present series—a plea to keep the door hereafter nearly closed to the Russian and Polish Jewish immigrant by 3% Quota Immigration acts, and it is the Alpha and Omega of these articles, the first of which, in its opening italicized paragraph, makes some recklessly fallacious statements about the supposed relationship of our new Immigration laws to the Jews of Eastern Europe, and the last of which concludes with a eulogistic plea for the continuance of the unprecedentedly harsh and oppressive 3% Immigration Quota Law. The rest is all incidental or sugar-coating.

A close student of American affairs may well be amazed by the entirely unwarranted dogmatic but specious much-advertised statement with which Mr. Hendrick starts, to wit, that "Congress has passed and the President has signed an immigration law chiefly intended—it is just as well to be frank about the matter—to restrict the entrance of Jews from eastern Europe." That Mr. Hendrick has no authority whatever for imputing such purpose to President Harding, our chief executive's own utterances clearly show.

It is, however, equally clear to any student of the legislative history of the measure that this was not the purpose of Congress, either; "frankness" would dictate a concession on our author's part that he went to his imagination for his facts, instead of studying and investigating them, and he employs specious half-truths, calculated to injure the Jews amid the horrors of Eastern Europe, even more than here. That there has been for years a strong movement for the restriction of immigration from Southern and Eastern Europe, chiefly Catholic, but with a com-

paratively small fraction Jewish, no one can deny. This movement emanated from the Immigration Restriction League of Boston, (which is circularizing the country simultaneously with the publishers of the "World's Work," and on whose board Pres. Lowell of Harvard figures) and was carried by Senators Lodge and Dillingham of New England into the investigations and findings of the U. S. Immigration Commission, with apologies and explanations for classifying the "Jews" with other "New Immigrants" of Southern and Eastern Europe—notwithstanding their conceded superior "race value;"—as they also were of a different stock than the "old immigrants," who had come over in relatively predominating numbers before the 80's. President Eliot of Harvard frankly and publicly pointed out, over a decade ago, that the Immigration restriction movement was really in its essence an anti-Catholic movement. Its relations to Massachusetts politics, with the resulting jeopardizing of Republican political control there by the settlement of Catholic foreign-born voters, apt to vote the Democratic ticket, and to some degree re-inforced by Jewish naturalized voters, has also not been lost sight of. The peculiar appeal of a crusade against the non-English to New England Brahmins (including our Yankee-born author) was emphasized in the U. S. Senate as far back as 1790, when Senator Maclay of Pennsylvania tersely said: "We Pennsylvanians act as if we believed God made of one blood, all the families of the earth, but the Eastern people seem to think that he made none but New England folks." Some years after Pres. Eliot's statement, an estimable lady of New England ancestry, broadened by useful years spent in a broader Middle Western atmosphere, stated at a congressional hearing that the restriction movement was aimed at Catholics and Jews chiefly, and latterly, Congressman Chandler, deprecatingly, repeated this statement on the floor of the House of Representatives.

It remained for Mr. Hendrick to twist this charge into a claim that the movement was aimed simply at the Jews of Eastern Europe! However, if he had familiarized his editorial omniscience with the facts of the matter, he should have stated that, in fact, in the midst of the Kishineff massacres, the U. S. House of Representatives in 1906 even passed a bill to amend our "likely to become a public charge" immigration act, avowedly designed to admit the Russian Jewish religious refugee to our shores, even if in fact likely to become public charges. He would also have been bound to confess that when our immigration literacy test was being enacted in the year of our entrance into the Great War, even Senator Lodge publicly advocated the express exception that was enacted,

in favor of religious refugees, in order to admit Russian Jewish and Armenian victims of religious persecution. He would also have been obliged to admit that, when our 3% Quota law was before Congress in 1920-1, in the midst of our own grave economic distress, with untold millions of potential immigrants yearning to come over, the House of Representatives passed a temporary emergency bill, particularly designed to effect the humane purpose of admitting practically solely European relatives of resident recent immigration stock, in large degree Jewish. Next, when the brutal and racial-discriminating Quota law was framed in the Senate by Senators Dillingham, Lodge and Colt of New England, instead, the House expressly amended the bill to exempt such religious refugees, but the Conference Committee unfortunately eliminated the provision.

So much, then for our author's most serious fallacy. As I do not believe that he intentionally misstated the facts in question, I'll merely note this new illustration of the old adage. "a little knowledge is a dangerous thing," all the more dangerous when coupled with arrogated editorial omniscience called "frankness!"

Mr. Hendrick is no more accurate, despite his assumption of historical and ethnological grasp, in his preposterously unjust characterization of the Russian and Polish Jews in this country as nomads, largely of non-Jewish Turanian, Tartar, Mongolian and Slavic origin, underlying his portrait of them in our day. His pseudo-scientific conclusion, stated in his third article, entitled "The 'Menace' of the Polish Jew" is that they never were "Europeanized," and that "the masses that comprise one-fourth the present population of New York City trace their beginnings, in considerable degree, to certain tribes that roamed the steppes of Russia in the Middle Ages and happened to accept the religion of Judah as their own" (p. 367).

Leaving aside for the time being the marked difference between Russian and Polish Jew, which he either studiously or ignorantly disregards, he develops his thesis on the basis of the semi-legendary tale of the alleged conversion of the Khazars (Chazars) in the eighth century on the supposed authority of Dr. Fishberg's ethnological study "The Jew" and the Jewish Encyclopedia. Even if he had been justified in confining himself to only one of the three references to "Chazars" appearing in the index to the Fishberg volume, (p. 194) he would, in ordinary fairness, have been compelled to modify his statement that the "Khazars, according to so high an authority as Dr. Maurice Fishberg, 'made up the nucleus of the future Jewry of eastern Europe' " by substituting that

author's qualifying phrase "some historian even say" this. In appropriate places (pp. 114 et seq.) that author distinguishes between a so-called "Turanian type" "often encountered among the Jews in South Russia," etc., (which scientific guess-work partially identifies racially with the Chazars), and three other types of Jews he refers to, also encountered among the Russian and Polish Jews, namely, the "Slavonic," the "North European or Teutonic" and the Mongoloid types.

Had he even taken the trouble—usual even among newspaper men of standing, of at least looking up the encyclopedia references he cites, before discoursing learnedly on the subject—he would have read in the article in the "Jewish Encyclopedia" entitled "Chazars" by Herman Rosenthal that even in the Middle Ages, "the Chazars enjoyed all the privileges of civilized nations, a well-constituted and tolerant government, a flourishing trade and a well disciplined army. In a time when fanaticism, ignorance and anarchy reigned in western Europe, the kingdom of the Chazars could boast of its just and broad-minded administration, and all who were persecuted on the score of their religion found refuge there."

So much regarding that obscure race, falsely described as "tribes that roamed" Russia. But suppose there were an appreciable filtration of Chazar blood of the 8th century in the veins of the Eastern Jews today, and assuming that these Chazars were absorbed at that early day by the "people of the book," what possible justification is there for treating their Jewish descendants twelve centuries later, as having inherited the traits of "roaming tribes?" One is forcibly reminded—when such supposed part-descent is applied in opprobrium by a descendant of the Angles and Jutes of the northern woods—to the answers ascribed to two of Mr. Hendrick's own heroes, Benjamin Disraeli and Judah P. Benjamin, to similar taunts (Pierce Butler's "Benjamin" p. 434): "It is true that I am a Jew, and when my ancestors were receiving their Ten Commandments from the immediate hand of Deity, amidst the thundering and lightnings of Mt. Sinai, the ancestors of the distinguished gentleman who is opposed to me were herding swine in the forests of Scandinavia."

To carry the "nomadic" figure of speech one step further, and apply it, in similar illogical vein to the descendants of the Pilgrims of New England, we might describe their stock also as "nomadic," as evidenced by their migration to England, their sojourn in Holland, followed by their migration to New England, which in turn has been followed by the migration of their most enterprising and courageous members in successive waves westward. But Mr. Hendrick's blundering does not

stop there. The Jews indigenous to Poland and Russia respectively were of materially different stock, and people familiar with the history of the Jews of Poland sharply distinguish between the less literate Russian-speaking Jewish immigrants into Poland of the last four or five decades driven out of Russia proper by the persecutions referred to, even before America was a possible land of refuge, and the Polish Jews whose ancestors as well as themselves became assimilated for generations with their Polish Catholic associates, of whom Prof. Ashkenazy, Poland's representative in the League of Nations, is a type. As concerns this considerable section of Polish Jews, Mr. Hendrick's statement is entirely unwarranted that they "have never been Europeanized; for ages they have lived in Poland, in Russia, in Hungary, in Roumania, not as a nation or part of a nation, but essentially as a tribe."

If we go back a century or so, the statement is also false as regards the great bulk of Jews who since then have been Russian by birth. We should not forget—even if most of us gather our information merely from Sienkewicz's historical novels instead of more authoritative historical works on Poland—that for centuries during the middle ages, Poland was one of the most cultured and advanced nations in Europe, though her rescue of Europe from the Tartars was requited by her indefensible spoliation by Prussia, Russia and Austria in the 18th century, which marks the beginning of her political, intellectual and economic decay, particularly with respect to the sections annexed by benighted Russia. In the days of the heyday of her glory, her Jews ranked high, not merely in Jewish but in general culture and position, and for centuries, Poland supplied European Jewry with most of their scholars. Those whose ancestors had settled in Poland before the Russian migration of the last four or five decades were counted among Poland's most patriotic and assimilated residents as late as the Polish uprising of 1863, despite Russian tyranny and denial of elementary rights to the Jews.

Nor should it be forgotten that the great bulk of Russian Jewry—including those that re-settled in Poland during the last half century, at a time when Russian tyranny even forbade her persecuted Jews from leaving her dominions, as she did, till Baron de Hirsch's Russian concessions were obtained in 1891—were Polish, in origin, and became Russian only through Russia's acquisitions of the territory she secured through the 18th century partitions of Poland referred to. It is accordingly absurd to seek to identify even the bulk of Russian Jews with the descendants of the Chazars.

That Russian tyranny denied to her Jews nearly all the "rights of man," is undeniable, as also that she insisted, for a century or more after Western Europe had emancipated her Jews, on treating them as possessing a separate inferior nationality, and as subject to innumerable and intolerable disabilities, making life almost intolerable for them, even when pogroms did not result in massacres of thousands. It required the special pleading of a Burton Hendrick, however, to blame them for being involuntarily subjected to such disabilities, and in consequence thereof, to describe them as practically unassimilable! Occasionally, he goes even beyond this, as when he recklessly falsifies the Orthodox Jew's daily prayer, and mistranslates it—with the obvious purpose of fanning prejudice against the Jew as—"Thank God, I am not a dog, a woman or a Christian", instead of "I thank God that I am not a slave, a woman or a heathen"! That the term "heathen" (akum) has not been used by the Jew to include "Christians" since the beginning of the Christian era, but that an entirely different term (Goy) was employed for them, is elementary, and was just clearly demonstrated anew by Dr. Josef S. Bloch in his "Israel und die Völker*", (p. 80 et seq.) on the basis of the ablest Christian opinion obtainable! In fact, a similar prayer was attributed to Plato.

It is also elementary that the Jews of Europe outgrew the Oriental undervaluation of woman, which they once shared, centuries ago, making libelous Mr. Hendrick's statement that the Polish Jew "treats his womankind in a way that suggests his Asiatic origin".

But such misstatements in these articles occur on nearly every page. Because it bears on important present-day conditions, the falsity of each proposition he enunciates should be noted in the passage that, at the recent Peace Conference the Polish Jews acquired the "right to be regarded as a 'minority people' in a resurrected Poland", permitted "to maintain themselves in Poland as a separate people, with the right to a certain number of seats in every municipal council and the national parliament, with important powers of legislation and taxation, with their own law courts, . . . and other important advantages which they are to enjoy not as Poles but as Jews." In contrast to this, we should turn to M. Clemenceau's authoritative letter of June 20, 1919, as president of the Peace Conference to M. Paderewski, regarding these very clauses, in which he says: "They do not constitute any recognition of the Jews as a separate political community within the Polish State".

* Since translated under the title "Israel and the Nations."

The text of the treaty contradicts every one of the statements just quoted from Mr. Hendrick.

When contrasting the Russian Jewish immigrant with the "old immigrant", in the matter of the latter's greater disposition to settle in rural sections, Mr. Hendrick again distorts the picture by referring to the Eastern Jews alone as generally settling in our large cities, nay, more, as "exclusively city dwellers", and of the "Atlantic seaboard" at that. A mere reference to the annual reports of the immigration bureau shows that this is a strong characteristic of the bulk of almost all newly arriving races nowadays, and it is particularly pardonable on the part of European urban dwellers coming over here like the Jews. For example 31.8% of all the immigrants of all races who came over from 1899 to 1910 were destined to New York, 18.2% to Pennsylvania, 7.6% to Illinois and 7.5% to Massachusetts. Even of the English, over 26% went to New York; of the Irish 36%; of the Germans, 25%; of the Greeks, 32%; of the South Italians, 42%; of the Polish (exclusive of the Hebrews) 21%, and of the Russians (exclusive of the Hebrews), 31%. The 1910 U. S. census of mother tongues showed over 57% of the inhabitants of Italian stock in our country to be residents of the Middle Atlantic States, over 34% of New York State. In his eagerness to arouse prejudice against the Russian Jews, this proclivity on the part of these other races is ignored. Moreover, even a superficial knowledge of American history would have compelled a candid chronicler to have conceded that the bulk of the alleged "old immigrants", for a century past the Irish and Germans, also settled chiefly in our cities, to say nothing of the "lure of the city" for our native American country boys and girls. More excusable is his further fallacious background about our population at the time of the Revolutionary War being 80% "colonists from the British Isles"; here he merely follows in the wake of certain more pretentious sociological doctrinaires, eager to assert a former mythical homogeneousness of our population, who ignore the fact that our chief ethnologist, Prof. Wm. Z. Ripley, recently adopted Bancroft's statement that already at the time in question "one fifth of the white population could not speak English, and that one-half at least was not Anglo-Saxon by descent".

But there is much less excuse for his ignoring the enormous shifting of all our immigrants, and particularly of the Jewish, away from the large cities of their original settlement, throughout the country at large, which a mere cursory examination of our U. S. Census, particularly of 1910 shows, and which was so clearly demonstrated by

Prof. Walter E. Willcox. If he looked at the statistical figures of the last American Jewish Year Book, he would have observed that every state in the Union has a Jewish population and not merely our large cities. If he had even reasonably prepared himself for his self-appointed task, he would have been compelled to admit that the Jews alone, of all American race-stocks, have organized systematic efforts to distribute their co-religionists throughout the country, through such organizations as the "Industrial Removal Office"; "Galveston Bureau", and the "Jewish Agricultural Aid Society", the first-named having directly effected the removal of over 50,000 Jews away from the large cities, to small centers which, invariably, themselves, thereupon became nuclei of new Jewish settlements. Moreover, even an elementary knowledge of his subject would have prevented him from making the misleading statements about Jewish efforts to prevent governmental enumeration of Jews, found at the beginning of his first article. The U. S. Census of 1910 contained "mother tongue" statistics, in which Yiddish expressly figured, and disclosed 1,676,762 persons in the United States of Yiddish-speaking stock, 1,051,767 foreign-born, even arranged by states. In the American Jewish Year Book for 1914-15, an able analysis of this and related statistical information appeared, including our immigration records, prepared by the late Joseph Jacobs, and it was on the basis of these figures that the estimate of three million Jews in the United States was arrived at. Instead of suggesting questionable motives for our Jewish opposition to governmental enrollment of Jews as a "race" in connection with the bill for taking the 1910 census—based on our desire to figure as a religious body only—Mr. Hendrick erroneously states (p. 145) that the proposition they defeated was for an enumeration of religious affiliation! The very point of our obligation was that, unless adherents of all religions be thus enumerated by the Government, there was no justification for classifying Jews as such.

Again, either through ignorance or through the reckless bias of a special pleader, while painting them in lurid colors as "slum dwellers in New York, Baltimore, Boston, Philadelphia and other Atlantic cities", he entirely disregards the fact that, though there may be continuing self imposed "Ghettos" in our large cities, the individual immigrant lives in a particular one of these, as an almost invariable rule, for a short time only, and moves away into different sections of the cities or country involved, as his means and Americanization increase. For the individual Jew, the problem of distribution thus promptly solves

itself, though it is greatly expedited, as above pointed out, by systematic organized Jewish effort.

Mr. Hendrick's dogmatic assertion that the Portuguese and German Jews did not concentrate in our large cities is also unfounded; the first comprehensive American Jewish statistical study ever prepared, that published by the Union of American Hebrew Congregations in 1880, disclosed a distribution of an estimated Jewish population of our country of 230,257, chiefly among the following States, (almost wholly among their large cities): California, 18,500; Illinois, 12,625; Louisiana, 7,538; Maryland, 10,337; Massachusetts, 8,500; Missouri, 7,380; New York, 80,565; Ohio, 14,581; and Pennsylvania, 18,079.

Probably nothing is more absurd than his observation, having its originality as its only claim to attention, that the Eastern Jew's religion is "probably the greatest obstacle to his Americanization"; that his "orthodox faith itself offered an almost complete impediment to his industrialization"; and that "even though he had an inclination for manual labor of the usual kind, he could not have engaged in it and remained an orthodox Jew". The supposed obstacle to industrialization afforded by our Sunday laws has been met for decades by express exceptions in favor of the seventh day, but a glance at the Ghetto districts on Saturday shows how greatly Sabbath observance is honored in the breach, rather than in the observance. But the most cursory glance at our Government's immigration statistics instantly refutes the claim that the orthodox Jew's religious practice stands in the way of his engaging in manual labor.

A glance at statistics of occupation of Jewish residents further enormously increases these percentages, soon after landing, to say nothing of such institutions as our Hebrew Technical Institute, our Baron de Hirsch Trade School and the enormous attendance of Jews in public vocational schools.

Mr. Hendrick's accompanying statement that Sunday laws prevent "municipalities or railroads" employing Jews as laborers (p. 369) is not only erroneous, but is contradicted by him as to the former on the very next page, where he says: "On Jewish holidays at least 40 per cent of the New York school children are absent; certain schools are totally deserted, and the *city departments in which Eastern Jews are extensively employed, are all but depopulated*". The fact that they so largely participate in public school education as a conclusive answer to the alleged failure to become Americanized, our author prefers to ignore, as also that illiteracy is much lower among the children of

foreign-born than among the children of native-born. Their alleged concentration in the slums of our large cities is contradicted on the next page by his reference to "Jewish retail shops, in *infinite number* (that) sprang up *in all parts of the city*". Their alleged confinement to the large cities is contradicted by his statement (p. 371) about their having become "omnipresent in the vineyards of California", for example.

He seeks to qualify his own grudging concession that "the second generation is largely employed in the public service—as clerks and stenographers in the city departments, as lawyers, doctors, dentists, as school teachers, policemen and firemen" by the contention that this enumeration "proves one thing: their assimilation has taken place only to a very moderate extent", which baseless qualification will convince scarcely any one than our author of its accuracy. But if he knew more of his subject, he could not conscientiously confine this enumeration to "the second generation".

And if he had studied such conclusive demonstrations of American Jewish patriotism and participation in our public life and on the battle-field as Simon Wolf's "The American Jew as Patriot, Soldier and Citizen", the proceedings of "The 250th Anniversary of the Settlement of the Jews in the United States", the summary of the records of the Jewish Welfare Board of the late war and Lee J. Levinger's "A Jewish Chaplain in France", (indicating voluntary participation and bravery far beyond their numerical quota in our armies during the late war, particularly on the part of the Russian Jews) he would have answered quite differently his initial insidious and misleading inquiry: "Is it true, as is so commonly charged, that the Jews constitute an unassimilable element in our population, that they can never become American, never think like Americans, that in this country, as elsewhere, they form a kind of Gulf stream, in the great ocean of humanity—that they are part of the general mass, and yet entirely distinct from it?"

Space, of course, forbids comment on the very large number of erroneous and misleading statements found throughout the series; suffice it to reiterate that Mr. Hendrick starts entirely wrong in outlining the history of the eastern Jew in America. Naturally, one does not find proportionally many of them among the chief capitalists of the country. One can find ten times as much truth about them in Dr. Samuel Joseph's unpretentious but conscientiously accurate Columbia University study, entitled "Jewish Immigration to the United States

from 1881 to 1910" than in Mr. Hendrick's pretentious, misleading, dogmatic, biased and inaccurate generalizations; as also in Dr. Charles S. Bernheimer's "The Russian Jew in America" and Abraham Cahan's "Atlantic Monthly" study on "The Russian Jew".

In Russia, 39% of her Jews were engaged in manufacturing and mechanical pursuits, 3% in agriculture, and, disregarding the rest, only 32% in commerce. The assumption that nearly all were "hucksters, hawkers, peddlers, small tradesmen, petty bankers and the rest" abroad, is thus absolutely erroneous. Seven times as many Jews as Russians in general were found among Russian professional classes, and the Russian Jewish percentage of illiteracy was 49.9% as compared, with 72% for Russians in general. The percentage of illiteracy among Russian Jews admitted here between 1899 and 1910, according to the U. S. Immigration Commission figures was 26%, which is only one of many indications that those landing over here were twice as cultured as the home average, as naturally they were the more enterprising, vigorous and select, thanks chiefly to the very substantial barriers of our U. S. Immigration laws since 1891. The number of non-Russian immigrants of the Jewish faith who arrived during the period 1899 to 1910, was practically negligible, so we may accept Dr. Joseph's figures that 36.8% of all were skilled laborers, according to the U. S. immigration figures, .7% professionals, 17.4% miscellaneous and 45.1% without occupation, being practically all women and infant children.

Disregarding these non-occupational classes, we find that only 11.1% were merchants and dealers, 67.1% were skilled laborers, 11.8% servants. The absurdity of comparing success in literature, art and the higher fields of commerce of such modestly-endowed two or two and a half million recent immigrants (most of them arrivals during a decade or two before the War) and their children with the much better-placed and endowed hundred million inhabitants of our country at large, is therefore at once obvious.

Why most of them follow the occupations, however necessary or important here, which Mr. Hendrick animadverts upon, is also apparent, when we realize that of those reporting skilled occupations, 36.6% were tailors, and Mr. Hendrick's assertions about absence of industrialism notwithstanding 10.3% were carpenters, joiners, etc., 5.9% shoemakers, 4.3% painters and glaziers, 2.9% butchers, 2.8% bakers, 2.4% locksmiths, 2.2% blacksmiths, while 10% were dressmakers and seamstresses and 4.3% clerks and accountants. While 20.2% was the percentage of skilled occupations among the average immigrants, the

Jewish counted 67.1%; while the average immigrants ran 79.3% unskilled laborers, (including farm laborers), the Jewish averaged only 13.7%.

Here, in addition to their preponderatingly large home character of city dwellers, and their more stunted physique and inherited tendencies, we find the explanation for their going, in the first instance, to the cities, and for their disinclination to work in our mines, dig our subways and sewers, and work on our farms. That an abnormally large number of the Jewish immigrants of the last three decades go, first of all, to our large cities, is furthermore to be accounted for by the fact that, having so little money, they would be debarred by our immigration authorities, if they did not join relatives and friends here, ready to look after them, as is the case with 97% of the "new immigrants", including the Jewish, according to the Immigration Commission reports, as compared with 89.4% of the better-to-do "old immigrants".

Hence it is not surprising that over 80% of all the Jewish immigrants during the period in question went, in the first instance, to three States, 64.2% to New York, 10.1% to Pennsylvania and 6.1% to Massachusetts. From there many promptly moved elsewhere, after getting their start and saving enough to send for their families, as shown by our various local Jewish statistical estimates, Prof. Willcox's investigations and the Government 1910 mother-tongue statistics. They also account for the fact that nearly 65% of the Jewish immigrants during this period went to New York in the first instance, while somewhat less than half of the Jews in the United States are today located in New York City.

Thus far I have not considered the chief factor which induced the Russian Jewish immigrant in general to remain for some time in the slums of our chief cities, and work there at the trades in which employment is most easily to be found, and which require the least fresh training, and are enumerated by Mr. Hendrick as the needle industry, the liquor trade, the tobacco trade and pushcart peddling. It is the circumstance that he arrives here with scarcely any funds, the average Jewish immigrant during the period in question having had only \$12.85 in money, even less than the general average of \$21.57. Immediate employment is necessary, and he could not be squeamish about its character, as long as it was within his capacity, no matter what his occupation abroad may have been. Nothing else—barring a little assistance from relatives and friends apt to be little better off than he,—stood between himself and actual pauperism on landing.

On the other hand, dependent relatives abroad awaited daily supplies

from him, as he succeeded in accumulating petty savings, and when he became able, after working in slums amid unsanitary and cheerless surroundings, he sent for wife, children or other relatives abroad to join him in the land of promise. Israel Zangwill years ago, gave the most succinct answer to Henry Ford's absurd notions about Jewish schemes for economic world supremacy, the adage "rich as a Jew" ought to run "poor as a Jew", for that has been the fate of the great majority of our persecuted, down-trodden co-religionists, whose poverty was increased a hundred-fold abroad by Russian tyrannical laws and orders, making life well-nigh impossible for them.

The miracle is that the overwhelming majority have succeeded here, despite these obstacles, have achieved economic comfort and raised themselves and their families out of well-nigh hopeless distress, and that, comparatively speaking, as well as absolutely, scarcely any become public charges. With over 90% of the Jewish population of the country removed only one, two, three or four decades from absolute poverty, it is ridiculous to compare any appreciable number of them with the well-endowed Anglo-Saxon residents, born and bred in comfort, and to the manner born.

With the average Jewish resident correctly described as "the most adroit shoe-string capitalist in the world", Mr. Hendrick, for once, is also right in adding that "he can start business on almost anything; a few dollars, the labor of himself and his family—with these as a foundation, he frequently works himself up to at least a moderate prosperity". How can one reasonably expect substantial numbers of immigrant Jews to constitute large stockholders in distinctively Jewish corporations, when the great majority have no substantial sums to invest at all!

The extent to which they invested their petty earnings in Government bonds in our great war emergencies is a subject Mr. Hendrick, however, prefers to avoid. The extent, moreover, of the aggregate holdings of stocks and bonds in our large railroads and other industrial enterprises, as disclosed by the appraisals of estates of well-to-do Jewish decedents, also contradicts Mr. Hendrick's assumption. True, the Jew is a born individualist; hence he never succeeded in maintaining a great political state, or even a really successful agricultural or other colony, though this has not prevented him from establishing here the best organized charitable organizations in the world, for example.

All our great men, from our ancient prophets down to the great idealists of our own day, were, it is true, individualists. Jewish in-

dividualism was caught up by Christianity's religious reformers, and gave birth to the Reformation. It inspired the Puritan Revolutionists in England, and it was "the Origin of Republican Form of Government", first in New England, then throughout our land. It underlies the slogan of our late war, to "make the world safe for democracy"; "God alone shall be our King"! It accounts for the ready, prompt and eager adoption by the immigrant Jew of American ideals, his boundless love for our country, and his eagerness to become Americanized, and do his duty on the battle-field and at the ballot-box.

As keen a judge as Theodore Roosevelt described the Jew of the East side of New York as our most discriminating and thoughtful voter! James Bryce's excellent passage in his "American Commonwealth", (II p. 488) with special reference to our assimilation of the immigrant, particularly applies to the immigrant Jew from Eastern Europe: "The point in which the present case of race fusion most differs from all preceding cases is in the immense assimilative potency of the environment. The schools, the newspapers, the political institutions, the methods of business, the social usages, the general spirit in which things are done, all grasp and mould and remake a newcomer from the first day of his arrival and turn out an American far more quickly and more completely than the like influences transform a stranger into a citizen in any other country. Nowhere is life so intense; nowhere are men so proud of the greatness and prosperity of their country. These things strengthen the assimilative force of American civilization, because here the ties that held the stranger to the land of his birth are quickly broken and soon forgotten. His transformation is all the swifter and more thorough, because it is a willing transformation".

Just because the immigrant Jew settles chiefly in our large cities, with their better-equipped schools and other assimilative agencies, his Americanization becomes all the more rapid. In fact, often it becomes too rapid, particularly with respect to religious and parental restraints, which are frequently too quickly thrown off by the younger generation. In this connection it is true, as Mr. Hendrick points out, to slightly paraphrase him, that "a short course in the use of the bath-tub and the tooth-brush after a while remedies defects of early training". Nay more, the hunted, persecuted, down-trodden Russian Jewish immigrant must and does acquire, in a measure, a new point of view in America towards the Government and his Christian fellow-men, than those the old world made alone possible for him. There everyone's hand, and

especially the Government's, was turned against him, and often life was possible to him only by circumventing legal, business and social restraints in various respects.

In this respect, as already pointed out, his transformation into worthy American citizenship follows closely upon the trails of his German Jewish brethren during the few decades following Moses Mendelssohn's death, which witnessed his emancipation in Western Europe. Doubtless, superficial and really unimportant differences in petty conventions and "loyalties" remain, which the prejudicial can and will note and exaggerate for some decades. Perhaps there is some truth in the adage that it takes three generations to make a gentleman, in the society sense Class "loyalties" may continue to bar entrance into various sanctified private clubs and private schools. Let those that will, continue to play with these baubles, and magnify their importance and significance, as long as they do not confuse them with substantials! But even physically, as the Immigration Commission's investigations showed, even the second generation of Italians and Jews over here approximate to our new American type, even in the shape of the skull, thanks to climate, food and environment.

But to return to Mr. Hendrick's picture of the American Jew. Has he intentionally omitted all highlights from his sombre picture? What about such fine Russian Jewish types transplanted to America as David Lubin, whom William R. Thayer just characterized as "one of the distinctive great men of his age—one of the Light-Bringers", a "minor Hebrew Prophet"? What about a similar agricultural expert, Aaron Aaronsohn, whose discovery of "primitive" wheat promises to fertilize arid districts all over the world, and at whose instance our Government opened an American Agricultural Experiment Station in distant Palestine? What about the Russian-American "Dreamers of the Ghetto", whom Hutchins Hapgood discovered in New York and described in his "Spirit of the Ghetto"?

What about the countless parents, "mothers in Israel" as well as fathers, for whom no sacrifice is too great, to afford their children the educational advantages benighted Czaristic Russia denied to them, despite all their efforts and sacrifices? What about such a type as Bernard Berenson, Russia-born, but educated in Massachusetts, who has long been the foremost living critic of Italian art? What about such a galaxy of distinguished healers of humanity, as gave up opportunities to amass this world's goods, to devote themselves to the blessed work of the "Rockefeller Institute of Medical Research" as Flexner,

Meltzer, Levin and Jacques Loeb, not to forget Michelson of Chicago, winner of the Nobel prize for Physics? What about Herman Rosenthal, the author of the article on the Chazars cited, cultured author and winner of the Russian Red Cross medal who exposed himself to grievous and unwonted sufferings, in organizing colonies of his co-religionists in our Northwest and at Woodbine, and then returned to letters, being one of the editors-in-chief of the "Jewish Encyclopedia" and head of the Slavonic department of the N. Y. Public Library?

But such enumeration can be continued indefinitely, our author notwithstanding. It should, however, be remarked that, as has been well said, immigration forces the American laborer up, not down; the chief persons injured by it are the laborers at the bottom of the ladder, with whom the newcomer competes. Despite our author's contention that the Jews are such individualists that they will not organize, the humble Russian Jewish laborers have formed their own trade unions, and, in spite of threatened injury to themselves, they have demanded with one voice that our doors remain open for the refugees from abroad, escaping the misery that they themselves were but recently subjected to, even if it took half the bread out of their own mouths. Their ability to organize was also demonstrated by the formation of Jewish Farmers' societies for mutual aid and co-operative buying, which—under the advice of Leonard G. Robinson, lately manager of the Jewish Agricultural and Industrial Aid Society, afforded the chief impetus and precedent for our government Rural Credit system recently.

To conclude, let our author heed the wise counsel of another New Englander, Prof. Josiah Royce, America's chief philosopher, as expressed in his essay on "Race Questions and Prejudices".

"Let an individual man alone, and he will feel antipathies for certain other human beings very much as any young child does—namely, quite capriciously—just as he will also feel all sorts of capricious likings for people. But train a man first to give names to his antipathies, and then to regard the antipathies thus named as sacred merely because they have a name, and then you get the phenomena of racial hatred, of religious hatred, of class hatred and so on indefinitely. Such trained hatreds are peculiarly pathetic and peculiarly deceitful, because they combine in such a subtle way the elemental vehemence of the hatred that a child may feel for a stranger, or a cat for a dog, with the appearance of dignity and solemnity and even of duty which a name gives. Such antipathies will always play their part in human history. But what we can do about them is to try not to be fooled by them, not to

take them too seriously because of their mere name. We can remember that they are childish phenomena in our lives, phenomena on a level with the dread of snakes or mice, phenomena that we share with the cats and with the dogs, not noble phenomena, but caprices of our complex nature".

THE ADMINISTRATION OF OUR CHINESE IMMIGRATION LAWS*

The following correspondence is of special interest as indicating the amendments which may be made to the regulations of the department without change of the law, with positive advantage to the treatment of Chinese legally visiting or residing in this country:

Department of Commerce and Labor,
Office of the Secretary,
Washington, D. C., June 14, 1905.

F. B. Thurber, Esq., President, United States Export Association,
90 West Broadway, New York:

Sir—Under cover of your letter of the 10th instant the department is in receipt of a copy of the resolutions adopted by the directors of your association at their meeting on June the 9th instant.

Referring to the first of said resolutions, which charges that the administration of the Chinese exclusion laws is harsh and unreasonable, "in that it has been applied to classes other than laborers", I have the honor to call your attention to the pamphlet containing the treaty and laws in relation to the exclusion of Chinese, sent under separate cover. As you will see from the titles of the various acts, the exclusion laws do not refer solely to Chinese laborers, and particularly that the Act of April 29, 1902, was enacted to prohibit the coming into and regulate the residence within the United States, its territories, etc, "of Chinese and persons of Chinese descent". In the body of the various acts, specifically, Section 6 of the Act of May 6, 1882 (p. 9 of the pamphlet), certain conditions precedent are required to be fulfilled by "every Chinese person, *other than a laborer*, who may be entitled by said treaty or this act to come within the United States."

Manifestly, therefore, it is the duty of administrative officers to require such Chinese persons to comply with the express requirements of the statute; but in doing this, so far as the department is aware, its officers are neither "harsh" nor "unreasonable". If your association has specific information to the contrary, and will furnish such information, proper means will be taken to prevent a repetition of such occurrences.

* From *Journal of American Asiatic Ass'n*, Vol V, July, 1905, pp. 176-179.

The department, it should be superfluous to say, is entirely in sympathy with any movement whose object is to avoid improper action upon the part of its officers in the enforcement of the laws, not alone because of the practical consideration that such action would be injurious to the commercial intercourse of this country with China, but as well for the reason that this Government should not tolerate acts of injustice by its officers to any foreign peoples.

Awaiting the receipt of the above requested report of the facts upon which alone it is assumed your directors would have adopted the resolutions referred to, I am,

Respectfully,

V. H. METCALF, *Secretary*.

New York, June 26, 1905.

F. B. Thurber, Esq., President, United States Export Association,
90 West Broadway, New York:

Dear Sir—Complying with your request for information as to specific cases as to harsh and unreasonable regulations adopted by the Department of Commerce and Labor in the enforcement of the Chinese exclusion laws, not required by statutes or treaties of the United States, and a few specific instances of oppressive treatment of the Chinese by executive officers attached to the Department of Commerce and Labor, justifying the resolutions of your association denouncing our present Chinese exclusion policy, I beg to submit the following, pointing out that my duties as assistant United States District Attorney in this city from 1894 to 1898, charged with enforcement of these laws, and representation of many Chinese in the courts and before the departments since then, make me very familiar with this subject.

(1) It is doubtless true that the chief grievance of the Chinese is embodied in our statutes themselves, and not merely in their administration. Radical changes in the laws are necessary, and not merely in their administration, in order to relieve them of their brutal and outrageous unprecedented character and inconsistency with treaty. I beg to refer you to my article on our "Chinese Exclusion Policy and Trade Relations with China," published in the June, 1905 issue of *The Journal of the American Asiatic Association*, for a treatment of this general subject matter. My purpose herein is merely to indicate the harsh and oppressive administration of our statutes, such as they are. On the broader subject of the gross inconsistency of our statutes with treaty, I need say nothing further here, except to point out

that when our Government made representations to Russia in connection with the Kishineff massacre of the Jews, that country unofficially pointed out that a nation whose statutes were of such inhuman character as our Chinese exclusion laws, had no right to make itself the advocate of just and fair treatment to all nations. In fact, this analogy between our Chinese exclusion policy and the inhuman racial persecutions of the Middle Ages has been pointed out even in the opinions of our Supreme Court (Opinion of Justice Field in Fong Yue Ting case, 149 U. S. 698, 767.)

(2) The matter of the administration of our laws can properly be treated under two different headings, the treatment of Chinese persons found in the body of the country, possibly many years after entry into the United States, and secondly, treatment of applications for admission. The former class of cases is naturally much more important than the latter, because it affects not merely the comparatively few applying for admission every year, but the hundreds and thousands of persons who are residents of our country. I will accordingly first take up the matter of treatment of Chinese persons found resident here.

Under the provisions of the Geary Law as to non-registration, no Chinese persons found within the United States are safe from arrest and oppressive treatment. This Geary Law, as amended in 1893, required all Chinese laborers who resided in the United States on May 5, 1892, to register, and the time for registration expired May 3, 1894. Official contemporary letters from the Commissioner of Internal Revenue, who had charge of this matter of registration, showed that substantially all the Chinese laborers required to register did register before this statute expired, and had done so with the active co-operation of the Chinese diplomatic officials throughout the United States. (Foreign Relations of U. S. for 1894, page 166.) The statutes, however, permit the Government, without any proof whatever in its possession, to arrest any Chinese person found here and require him to prove his right to remain, frequently by unobtainable white testimony.

Merchants cannot be distinguished from laborers by inspection, and, in fact, persons who are non-laborers are frequently proceeded against for non-registration; even in the comparatively few cases in which merchants were possessed of certificates of admission, these have been illegally taken from them by unparalleled arbitrary regulation. Thousands of persons who are today Chinese laborers are moreover lawfully in the United States without registration certificates, under the decisions of the courts, either as (a) citizens of the United States by birth;

(b) persons who were too young to have been manual laborers on May 5, 1892; (c) persons who were merchants at the time of registration and have since *bona fide* changed their vocation and become laborers; (d) persons who have lawfully entered the United States since May 5, 1892, and have since, *bona fide*, become laborers. These classes of persons constitute the great bulk of Chinese laborers today within the United States, lawfully without certificates of residence. The absence of a certificate of residence in their cases, even though they be laborers, is, therefore, no proof that they are here unlawfully.

In fact, for years after the registration law was passed, there were scarcely any proceedings instituted for non-registration, though there were cases for unlawful entry, where the Government had actual proof of unlawful entry into the country. During the four years that I was in office in this city, from November 1, 1894, to April 1, 1898, only one single case was instituted in the district including New York City for non-registration. When, however, subsequent to that year, the immigration bureau fell into the hands of the labor union leaders, this Geary Law was seized upon as a convenient means of oppression, and thousands of cases of proceedings for non-registration, have been instituted ever since then, with the result that out of the approximately thousand cases per annum for non-registration according to the last report of the Commissioner General of Immigration, one-half resulted in defendants' discharge, after they had been subjected to much hardship and expense, while the remainder were ordered deported often because they were unable, under the unparelled burden of proof provision, to secure the necessary white testimony to establish their rights. Moreover, when the few white persons who have become sufficiently familiar, through business dealings with the Chinese, to be able to testify in detail as to their doings day by day, are called upon as witnesses, the Government is not slow to point out that the same witnesses are frequently called upon in successive cases, and their testimony should hence be discredited as that of "professional witnesses."

I, accordingly, specifically challenge as barbarous and illegal the unfair and improper regulation promulgated by the Commissioner General of Immigration, with the approval of the Secretary of Commerce and Labor, on July 27th, 1903, found as rule 24 of that compilation, which leaves no discretion even in the subordinate officials, but to arrest all laborers found here without certificates. Rule 24 reads as follows:

"Every Chinese laborer found within the United States without

the certificate of registration described by law, shall be arrested, after being allowed a reasonable opportunity under the close surveillance of the officer making such arrest, to produce such certificate, by any officer charged with the enforcement of the Chinese exclusion laws, and shall be taken by such officer before a justice, judge, or commissioner of the United States Court, in order that a warrant may be issued upon the oath of such officer for the commitment and trial of the said Chinese laborers."

The grossly oppressive character of this provision may aptly be illustrated by the fact, that according to well authenticated rumor only about 40 per cent of the Chinese laborers residing in the vicinity of New York have certificates of residence according to the Government census of the Chinese just taken. This means that several thousand Chinese laborers in New York alone are likely to be arrested in the near future, because without certificates, though the Government's report shows that substantially all laborers required to register at the time of registration did register, and that accordingly these persons are here lawfully without certificates of residence.

(3) I further challenge as illegal and in violation of the decision of the Supreme Court of the United States, rendered in the case of *United States vs. Tom Hong*, 193 U. S. 517, rule 27 of the regulations of July 27, 1903, reading as follows:

"Chinese persons who gained admission to the United States as members of the admissible class, and who, after admission, become laborers, shall be arrested as being unlawfully in this country, as is provided in rule 24."

See to the same effect rule 23, providing that "the immunity from arrest of the Chinese persons admitted thereon (on non-laboring certificates) resting upon their exclusive occupation in the pursuits for which their certificates or other evidence claimed that they respectfully seek admission to the United States." As to this, see in re *Jew Bing Hi*, 122 F. R. 319, inconsistent therewith.

These regulations are illegal and oppressive as applied to persons who, *bona fide* change their occupation after entrance into the United States as non-laborers.

(4) When the regulations themselves erroneously instruct subordinate officers as to their duties, invariably to the detriment of the Chinese, it is not surprising that over-zealous subordinate officials should go beyond the letter of the regulation. The most shocking and outrageous instance of this occurred, as far as my knowledge goes, in October,

1903, when several hundred Chinese persons residing in Boston, Mass., were arrested one Sunday night. No effort whatever was made to confine arrests to "laborers," as required by this regulation, but at a time when people were not engaged in laboring, so that even the officials were unable to guess at the pursuits of their victims, every Chinese person to be found in the restaurants, clubs, and private houses of Boston was arrested. It further developed in the course of these hearings, in which I was of counsel, that the excessive zeal of the Chinese inspector who instituted these proceedings, induced him recklessly to swear falsely in each of the hundreds of complaints on which these men were held. He admitted on the witness stand that his allegation that defendants were Chinese laborers was false, and that he had no knowledge whatever as to the occupation of the hundreds of persons concerning whom he undertook to swear positively upon his own knowledge. Judge Lowell, while recognizing these facts, felt constrained to hold that as no complaints were necessary in these cases at all, even a false oath underlying the proceeding would not avail the hapless victims. After the lapse of forty-eight hours about half of the arrested men were released by the Government itself, after some had been injured on account of their brutal treatment; others were discharged by the commissioner after hearings; a number were deported because they could not meet the oppressive burden of proof provisions of these laws. It is not surprising that such conduct as this should have led to mass meetings in Faneuil Hall, denouncing such disregard of the principles and traditions for which Faneuil Hall stood.

(5) About a year before this a number of Chinese were arrested in this city, but I was enabled to prove on behalf of the defendants that the warrants had been obtained by false oath and misrepresentation practiced upon the United States commissioner and the district attorney. Commissioner Hitchcock, before whom the men were brought, had the manliness to discharge each of the twenty-four victims on account of this fraud upon the court, and this was the end of these particular "raids" in New York. Sometime afterwards, as a result of the investigation demanded by the Chinese minister, the chief inspector, who instituted these proceedings in New York, was removed from office and his subordinate was transferred.

(6) Moreover, when we find such special provisions, subversive of all the usual incidents governing due process of law, made applicable to the judicial proceedings authorized against the Chinese, we see that

these judicial proceedings are bound to be hollow mockery in a large degree. None of the usual guarantees of our bills of rights apply to those proceedings, with their shocking reversals of the burden of proof and evidence provisions. Even the United States commissioners who are to try these defendants must be specially designated by the prosecuting officers themselves, in violation of the principles of our jurisprudence for the maintenance of the independence of the judiciary. An absurdly inadequate fee of \$5 per case only is allowed by special statute to a commissioner in these cases, for possibly many days of hearing and consideration, thus tending naturally to induce him to treat these cases in perfunctory fashion, and to curtail the time for the production of evidence by the defense. When even public and avowed efforts in the highest quarters are made to coerce the commissioners to decide these cases in favor of the Government (see 23 Opinions Attorney General 40), we can get an insight into the extra judicial efforts made by the subordinate officials frequently to induce the commissioner to decide against the defendants. But the particular administrative abuse, utterly subversive of the interests of justice which I want to refer to here, is the tabulation by the Commissioner General of Immigration himself, of the decisions, pro and con, of each commissioner in these cases in his "annual report," with the natural result that commissioners who decide too often against the Government to suit these prosecutors are "punished" by not being designated in other cases, with a resulting loss of fees. Compare the language of the Supreme Court on a similar point in *Southworth vs. U. S.*, (151 U. S. 179, 185.)

So much with respect to proceedings against Chinese persons, be they merchants, be they laborers, found peacefully residing within the United States long after entry.

(7) Taking up next the matter of treatment of applications for entrance and re-entrance, we should note, first of all, that a sharp distinction should be made between "laborers" and "non-laborers," and "entrance" and "re-entrance." It is true, as stated by Secretary Metcalf in his letter to you, that the Chinese exclusion laws do make restrictive provision as to non-laborers as well as laborers, but in so doing they violate treaty faith, especially as regards persons who came over here prior to the treaty of 1894, or since its termination, last December. But Mr. Metcalf's statement is misleading, because it ignores the fact pointed out by Justice Peckham as the spokesman

of the Supreme Court in the case of *United States vs. Mrs. Gue Lim*, 176 U. S. 459, 467:

"The purpose of the sixth section, requiring the certificate, was not to prevent the persons named in the second article of the treaty from coming into the country, but to prevent Chinese laborers from entering under the guise of being one of the classes permitted by the treaty. *It is the coming of Chinese laborers that the act is aimed against.*"

On the basis of this erroneous Governmental theory, the Department of Commerce and Labor has promulgated erroneous instructions to its subordinates, directed against whole classes of non-laborers entitled to come and go.

It has ignored the rights of domiciled non-laborers freely to come and go, and by its regulations (rules 1 and 2 of July 27, 1903) denies the right of re-entry to whole classes of non-laborers, such as physicians, missionaries, actors, editors and other professional men, contrary to the decisions of the courts (*U. S. vs. Chin Fee*, 94 F. R. 828; *In re Ng Quong Ming*, 135 F. R. 378), as also whole classes of non-laborers such as "traders," "restaurant keepers," "accountants," etc.

(8) Under these same regulations and notwithstanding the termination of the treaty of 1894, on which this whole assumption rested, non-laborers, such as "traders," "restaurant keepers," "bookkeepers," "manufacturers," etc., are being unlawfully denied admission under these same rules because claimed not to be "merchants" as specially defined, nor "teachers," "students" nor "travelers" for "curiosity or pleasure."

(9) In absolute violation of Section 6 of the Act of 1884, passed for the protection of non-laborers and of treaty faith, the Secretary of Commerce and Labor, by rule 23 of the regulations of July 27, 1903, requires his subordinates to despoil non-laborers of their certificates on entry. That statute requires all non-laborers to produce this certificate, "whenever lawfully demanded, and (it) shall be the sole evidence permissible on the part of the persons so producing the same," and makes it *prima facie* evidence. Non-production of this certificate on the part of non-laborers who entered since 1884 requires an order of deportation (*Wan Shing vs. U. S.*, 140 U. S. 424), yet without the slightest warrant of law, the Chinese non-laborers on entry are deprived of these valuable muniments of title to be and remain here. This illegal course is sought to be justified by the assertion, in the rule itself, that immunity from arrest rests upon exclusive occupation in the pursuit specified in the certificate, which is bad law, both

because *bona fide* change of occupation is authorized in the decisions of the courts and because this does not meet the duty of complying with Section 6, even on the part of conceded merchants, of proving lawfulness of entry upon proper papers, when their rights are challenged. But aside from this, the statute makes this certificate *prima facie* proof at least in favor of the holder, and what conceivable right has the Government to deprive them of such valuable evidence, which would commonly be a conclusive bar to arrest? Particularly in the case of merchants traveling about throughout the country, such certificate is an invaluable safeguard, and makes it unnecessary for them to become defendants in distant places, where they are not so well known. Something is said, from time to time, by the Secretary of Commerce and Labor, as to these certificates being often unlawfully issued to persons not entitled to them, "by officials of the Chinese Government." But this ignores the fact that our own diplomatic officials are required to visé these certificates, and that only after careful investigation, so these alleged fraudulent cases are largely imaginary; if the Department of Commerce wants its own officials to make this investigation before departure from China, no one will object. In any event, the certificate under existing laws is only *prima facie* proof, and this is a valuable right which the Department of Commerce and Labor can only despoil the possessors of by unprecedented despotism!

(10) Probably most numerous, however, are the cases of unjust exclusion of returning laborers, and here there has been a complete and intentional change of procedure on the part of the Government executive officials during the past few years, and an abandonment of their earlier, more humane course. Registered laborers residing in the United States, having specified property or relatives here, are permitted by the Act of 1888 and the treaty of 1894 to visit China, after procuring a return certificate before departure from the United States; these return certificates are issued only after a thorough investigation by the Government officials and under conditions concededly making it impossible, thanks to Bertillon measurements and the like, for anyone to impersonate the laborer to whom they were issued. Until May, 1902, the Government adopted the rational theory that a return certificate meant a certificate enabling its lawful holder to return. Suddenly, however, a method was discovered to make this law more "efficient" from the point of view of the Pacific Coast labor agitator, and it was discovered that it might possibly occur that the property

which the laborer had here on departing might be dissipated upon his return, and it was contended that a new investigation might be undertaken on the laborer's return, while he was detained in custody at the port of entry. The usual presumptions of law as to continuance of statutes were ignored, and the "return certificate" was reduced to a piece of waste paper, and new investigations into authorized and unauthorized complicated questions of fact and law were entered into, while the poor applicant remained at the frontier. Difficulty in understanding these aliens and their alien witnesses in these star chamber proceedings were transformed into alleged "contradictions." Inspectors vied with each other in efforts to make records by reporting in contradiction of their predecessors' report on which the return certificate was issued, and the result was that an overwhelming majority of the returning laborers, armed with return certificates, were excluded, after making their journey covering thousands of miles. Innumerable opportunities to err arise for the lay inspectors in determining these complicated questions of fact and law. The percentage of rejections has been so great that latterly scarcely any laborers dare leave on visits to China, and they are naturally better off than the thousands who have been denied admission because of the Government's repudiation of its return certificates. This administrative procedure, quite foreign to the plans of the framers of the treaty of 1894, originally drafted in 1888, is perpetuated today by ironclad regulations promulgated by the Secretary of Commerce, and he has frankly realized the situation by now at least providing (rule 20 of regulations, approved May 3, 1905) that the laborers should be advised of the practically valueless character of the return certificate at the time of its issuance.

(11) The number of instances, moreover, where returning laborers were rejected under inconsistent and doubtful constructions of the provisions as to securing extension certificates because return within one year was prevented "by reason of sickness or other cause of disability beyond his control" is legion. First it was ruled that these extension certificates had to be secured before the expiration of the year, and laborers getting them just before return were excluded, because too late. Next it was provided that they had to be issued at the very time of return, instead, otherwise they did not cover the whole period that departure was delayed beyond a year. The absurdity of trying to get certificates from the Chinese consul here issued at the time of departure from China showing ground of delay carried down to the time of departure from China, and to be ready for submission on the

laborer's arrival at our frontier port, was simply ignored. Moreover, every little while it was further ruled that a visé to this extraordinary certificate from the United States consular officials in China was needed. Every change of ruling was made retroactive, applications for delay to secure the modified certificate were denied and hundreds of hapless laborers who may have believed in national good faith and treaty right were sent back thousands of miles with their uncollectible possessions left here!

(12) Perhaps no case is more flagrant than one which occurred a little over a year ago, in which I was counsel, and which makes my blood boil whenever I think of it. An unfortunate laborer left for China, armed with a return certificate, issued upon proof, by himself and his debtor, that a Chinaman here owed him \$1,000. During his absence this debtor, who had been called as a witness in another case, gave some evidence which the Government deemed to be false. When his creditor returned, both were again examined and testified to the same facts, and there was concededly no conflicting testimony. The inspector, however, reported that in view of the discredit which he attached to the witness, applicant himself should be subjected on the theory that his claim was not corroborated! The Secretary of Commerce and Labor affirmed this ruling on appeal, although there is no requirement in the law for any corroboration, the testimony was uncontradicted, and the return certificate stood absolutely unimpeached! If this poor unfortunate is a leader in stirring up anti-American agitation in China, he can justifiably refer to his own experiences as cogent arguments against our course in observing treaty faith and meting out justice! Incidentally, it may be pointed out that "a new way to pay old debts" is thus indicated for the benefit of Chinese debtors here, anxious to rid themselves of their creditors. All they need do is either to deny the indebtedness altogether, with their creditor at the frontier with entry debarred, or to hesitate in their testimony or contradict themselves on immaterial collateral points, and their creditor's perpetual banishment results. Of course there are also infinite possibilities of misunderstanding or contradiction in good faith on immaterial points in such star chamber proceedings.

(13) In fact, however, the whole procedure is wrong and brutal. Applicants ought not to be dealt with at designated frontier points, far from their home, where it is often impossible for them to take their witnesses, and be deprived of counsel, nor defendants arrested and tried far from home. All these details, unjust and unreasonable

as they are, are established by mere regulation. The same is true of the unfair provision of the regulations, that "in every doubtful case the benefit of the doubt shall be given by administrative officers to the United States Government," a most dangerous rule of conduct to prescribe for the guidance of these subordinate lay officials, unadapted to make reasonable determinations on complicated questions of law and fact. And appeals under present conditions are commonly farcical, especially with the provisions of the regulation in effect that the inspectors should submit confidential reports upon the new evidence submitted on appeals, and accompany the records, after examining briefs for appellants, with their confidential, undisclosed "views in writing." Can one conceive of any judicial proceedings thus conducted, with new matters in the shape of "report upon new evidence" and "views" smuggled in behind the back of the appellant and his counsel, and withheld from them by interested inspectors, taught to regard any reversal upon appeal as a case of "turning them down"? In fact, as recommended by prominent immigration officials, special independent courts, with able lawyers on them, ought to be created like our boards of general appraisers in customs cases to hear such appeals.

In his letter to you, Secretary Metcalf says that "so far as the department is aware, its officers are neither 'harsh' nor 'unreasonable'. If your association has specific information to the contrary and will furnish such information, proper means will be taken to prevent a repetition of such occurrences." Without further augmenting this long letter, confined, as it is, merely to treatment of the practical administration of our Chinese exclusion laws, I think the Secretary will find a wide field open for reform and modification, beginning with the regulations of his "commissioner general of immigration" and approved in writing by himself. *The evils here referred to can all be remedied by changing departmental regulations without any new legislation.* If your association can bring about such needed changes, it will accomplish a much needed public service.

Very truly yours,

MAX J. KOHLER.

COOLIES VERSUS PRIVILEGED CLASSES*

A CHAPTER IN THE HISTORY OF OUR DIPLOMATIC RELATIONS WITH CHINA

In President Roosevelt's recent message the necessity for making certain radical changes in our Chinese exclusion policy is strongly emphasized, one of the most important of these being referred to in the following characteristically happy terms:

"But in the effort to carry out the policy of excluding Chinese laborers, Chinese coolies, grave injustice and wrong have been done by this nation to the people of China, and therefore ultimately to this nation itself. Chinese students, business and professional men of all kinds—not only merchants, but bankers, doctors, manufacturers, professors, travelers and the like—should be encouraged to come here, and treated on precisely the same footing that we treat students, business men, travelers and the like of other nations. Our laws and treaties should be framed not so as to put these people in the excepted classes, but to state that we will admit all Chinese except Chinese of the coolie classes, Chinese skilled or unskilled laborers."

The President thus seeks to secure a change in the prevailing policy of treating "officials, teachers, students, merchants and travelers for curiosity or pleasure" as the only permitted classes, each of these terms being, moreover, defined in a most restricted manner, and "hucksters," for instance, being expressly excepted from the class of "merchants," and numerous others by implication. This theory, that only expressly enumerated classes of Chinese non-laborers may enter or remain here, has been reduced by the Secretary of Commerce and Labor to the form of a "regulation" binding upon all his subordinates, and has been so applied as to work the exclusion of thousands of non-laborers. It received qualified support in opinions of Attorney General Griggs (22 Opinions, 130, 260), referred to by the Department of Commerce as authority for its regulations, in one of which it was decided that "traders" are not privileged to enter, and in the other that a merchant's

* From the *New York Tribune* of Jan. 15, 1906; reprinted in the *Journal of the American Asiatic Association*, March, 1906.

wife cannot enter—a decision soon after directly overruled by the Supreme Court before this regulation was promulgated.

The theory seems to have been first applied by Judge Ross, of California, in 1893, in the case of *U. S. vs. Ah Fawn*, 57 Fed. Rep. 591, which in turn was approved of by the United States Circuit Court of Appeals for the California Circuit in May, 1902 in the case of *Lee Ah Yin vs. U. S.*, 116 Fed. Rep. 614. The doctrine has never been approved by the United States Supreme Court, which, in fact, has several times declined to pass on it, using terms indicating doubt as to its correctness (*U. S. vs. Mrs. Gue Lim*, 176 U. S., 459, 562-563, 467; *Chew Hong vs. U. S.*, 112 U. S., 536, 542-543; *U. S. vs. Jung Ah Lung*, 124 U. S. 621), and, in fact, the doctrine has been rejected by the Supreme Court, in as far as it applies to the wife and minor children of resident non-laborers (*U. S. vs. Mrs. Gue Lim*, 176 U. S., 459), as also to all non-laborers domiciled in the United States (*Lau Ow Bew vs. U. S.*, 144 U. S., 47; compare *Ex p. Ng Quong Ming*, 135 Fed. Rep., 378, Holt, J.), though subsequent legislation has impaired the rights of domiciled merchants, at least.

If these statutes dealt with any subject other than Chinese exclusion, as to which race prejudice was aroused to fever heat a decade or two ago, it would have sufficed to point out that the usual principles of statutory construction are fatal to the theory that the term "laborers" is to be regarded as including all non-laborers not expressly enumerated as such, for the act of 1882 already contained a specific definition of "laborers," and the well established rule is that, in the presence of expressed definition, there is no room for creating an inconsistent one by judicial legislative implication, but it has been the strange fatality of these laws that judicial precedents, treaties, bills of rights and Constitution have all been authoritatively ignored in dealing with them.

The "exclusive enumeration" theory is supposed to rest upon the Treaty with China of 1880 (Article I), though more definitely reiterated, the government contends, in Article III of the treaty of 1894, which concededly expired on December 7, 1904. This construction was first placed upon it in any court in the opinion of Judge Ross above referred to, handed down thirteen years after the treaty of 1880 was signed, and the authority for this remarkable construction of the word "laborer," as including all non-laborers not expressly enumerated in the terms of "teacher, student, merchant and traveler for curiosity," was concededly found, not in the language of that treaty itself, but

in the supposed intention of the framers of that treaty, as disclosed by their reports to our State Department!

Before examining the report of these negotiations, let us examine the treaty of 1880 itself, which has thus been construed as sustaining this remarkable contention. Article I of the treaty grants China's consent to legislation by the United States regulating, limiting or suspending "the coming of Chinese laborers"; to make assurance doubly sure as to the scope of the classes to be excluded, it is expressly stated that the limitation "shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitation." Article II is the one invoked as giving color to this doctrine; it simply provides that "Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to citizens and subjects of the most favored nation."

The treaty of 1868 between the United States and China, known as the Burlingame Treaty, which this treaty of 1880 merely modified, and did not repeal, in its Article V recognized "the mutual advantage of the free migration and emigration of their citizens and subjects, respectively, from the one country to the other, for purposes of curiosity, of trade, or as permanent residents," and in Article VI provided that "Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation." The treaty of 1880, therefore, as its unmistakable language indicates, authorized the laws restricting the entry of Chinese laborers only, and of no other classes of persons, and all non-laborers were to continue to enjoy the fullest and freest rights.

In enumerating some of these classes in Article II of the treaty of 1880, or in using language broadly describing, rather than defining, classes of non-laborers, the purpose obviously was not to define "laborers" as including all persons not enumerated, nor to do what the treaty expressly declares shall not be done, to authorize exclusion of persons other than "laborers"; warrant for that had to be found in what the treaty did not say, and hence Judge Ross sought it in the report of the United States commissioners of the treaty negotiations. But do the treaty negotiations, as reported even by our own com-

missioners, in any way justify any such construction? It would seem that a careful examination of them leads to an emphatic negative answer, even if we confine our attention to the reports of our own negotiators, and ignore the scores of Chinese diplomatic protests against our course.

After the federal courts had declared various anti-Chinese Western State statutes unconstitutional, and the President of the United States had vetoed an act of Congress regulating Chinese immigration because confessedly violative of the Treaty of 1868, James B. Angell, John F. Swift and William Henry Trescott were, in 1880, appointed commissioners by the United States to secure amendment, by a new treaty, of the Treaty of 1868. Chester Holcombe, secretary of the United States Legation to China, acted as secretary of the commission, and appears to have been the only member who was conversant with the Chinese language. China appointed two prominent Chinese officials to act as her commissioners.

The American commissioners' reports of their negotiations were published in our "Foreign Relations" for 1881. From them it appears that on October 13, 1880, the American commissioners presented a draft of a proposed new treaty (pp. 177-8), which was criticized by the Chinese commissioners in a written memorandum, submitted on the 22d (p. 178), and they in turn presented a counter draft, which was discussed verbally next day, and a counter draft was submitted by China (pp. 186-7). The United States commissioners submitted a counter draft (p. 188), with observations, on November 2, written instructions concerning it being furnished to Mr. Holcombe, who acted as interpreter, and on November 6th, a new compromise draft was agreed upon and signed on the 17th.

Taking up for consideration, first of all, the first American draft (of October 13), we find that the American commissioners proposed as Article I a provision which, in substance, became Article II of the treaty as signed. It provided that "citizens of the United States visiting or residing in China, and subjects of China visiting or residing in the United States, for the purpose of trade, travel or temporary residence, for the prosecution of teaching, study or curiosity, shall enjoy in the respective countries all the rights, privileges, immunities and exemptions which are granted by either country to the citizens and subjects of the most favored nations." With respect to this provision the Chinese commissioners commented in writing: "This is in exact accord with the treaties now in force, and there seems to be no occasion for a re-enactment of this section." Mr. Trescott, on behalf

of the American commissioners, replied that "it was, as the Chinese commissioners said, only a summary, or recapitulation, of the provisions of existing treaties on the subject of the emigration and residence of the citizens of either country in the other.

"The article was suggested simply under the impression that, as the object of the present negotiation was one branch of immigration, it would be as well to make any treaty now negotiated a complete treatment of the whole subject. But if the Chinese government preferred to leave the provisions standing as they now do in several treaties and confine this negotiation to the immigration of Chinese labor, the United States commissioners would not object, and would not, of course, press any further consideration of the first article." As to the scope of the former treaties, thus summarized, the American commissioners themselves said: "The Burlingame Treaty gives to the subjects of China the right of unrestricted immigration into the United States; at least the government of the United States has hitherto acquiesced in that construction of the treaty."

Thus we find that instead of being a revolutionary enactment, prohibiting classes from entering, previously unlimited and unrestricted, both sides agreed that this new proposed article was a mere "summary, or recapitulation, of the provisions of existing treaties," theretofore concededly granting right of entry to all classes. The design to include all classes of non-laborers as privileged appears still more clearly from some recent comments of Mr. Holcombe, explaining this choice of terms, which will be presently considered.

The American commissioners in their first draft also suggested a second article, which, as materially modified, became Article I of the treaty as signed. Omitting phrases not here relevant, it authorized legislation by the United States prohibiting "the coming of Chinese laborers to the United States," and contained a most significant definition clause, reading: "The words 'Chinese laborers' are herein used to signify all *immigration other than for teaching, trade, travel, study and curiosity* hereinbefore referred to, and authorized and provided for in existing treaties."

The Chinese commissioners criticised this provision in writing on October 22, stating: "The separation of this class from the mass of the subjects of China in this manner is not in strict accord with the spirit of our treaties, and in practical operation would meet with many difficulties. But bearing in mind the deep friendship between the two

governments, in the event of embarrassments on either part a solution must be found in a spirit of mutual concession."

Considerable discussion thereupon arose as to the status of "artisans," China desiring specifically to authorize their entry, while the United States commissioners stated that this was inadmissible. In a written memorandum the United States commissioners said: "The United States commissioners feel it their duty to insist upon their definition of Chinese laborers. They cannot consent that artisans shall be excluded from the class of Chinese laborers, for it is this very competition of skilled labor in the cities where the Chinese labor immigration concentrated, which has caused the embarrassment and popular discontent they wish to avoid." Four days later an agreement was reached, the treaty which was signed on November 17, 1880 being then agreed upon, mutual concessions being made, the definition of "laborers" previously insisted upon by the United States being dropped, and Article I being remodeled so as to insert the suggestive words herein before quoted, that the legislation authorized shall "apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitation"; on the other hand, the exception as to "artisans" which China had urged, was abandoned. Unfortunately, the documents in our "Foreign Relations" do not give the details of the negotiations which intervened between November 3 and the agreement, and we have no "precis of the conversations," such as are furnished for the earlier conferences.

The promise made by the commissioners to the Secretary of State in their letter of November 6, that "we will by the next mail send you a full account of the negotiations from the period of our last dispatch, No. 11, of date of November 3," does not seem to have been complied with, their next letter, dated November 17, merely saying that "our former dispatches will have given you a sufficient history of the negotiations, but we deem it our duty to conclude with a review of the points which came under discussion," and uses such language as "without going into a detailed history of the negotiations which has been furnished to the department from time to time." In the letter of November 6, in which a full account of the intervening negotiations was promised for the next mail, the commissioners give their own inferences and conclusions merely, as follows:

"We desired, as you will see by the precis of the negotiations, to define with more precision exactly what all the negotiators on both sides understood by 'Chinese laborers'. But the Chinese gov-

ernment was very unwilling to be more precise than the absolute necessity called for, and they claimed that in Article II they did by exclusion provide that nobody should be entitled to claim the benefit of the general provisions of the Burlingame treaty but those who went to the United States for *purposes* of teaching, study, *mercantile transactions*, travel or curiosity. We have no doubt that an act of Congress excluding all but these classes, using the words of the treaty, would be fully warranted by its provisions, and as this was a clear and sufficient modification of the sixth article of the Burlingame treaty we did not feel authorized to risk such a concession by insisting upon language which would really mean no more, and which was entirely unacceptable to the Chinese commissioners."

Without stopping to show that the term "merchants" in the treaty is narrower than "immigration for trade" and "persons going for mercantile transactions," it may properly be noted that what warrant there could have been for the claim that Article II was regarded by the Chinese government as an exclusive enumeration does not appear from any published document. Such inference, as seen, is inconsistent with the avowed purposes of both sides as to the meaning of the "summary of existing provisions" of Article II and the history of the negotiations. The United States commissioners cannot have closed their eyes to the fact that both sides had made concessions, and that the reports show that China would not acquiesce in the exclusive enumeration and definition theory, and even the communication just quoted concedes that China would not be more precise. Nor is it an admissible theory that the trained diplomats representing us could have believed that China was proposing to bind herself by what her negotiators are claimed to have said, but declined to insert in the treaty, or that they had any authority to bind China by such alleged admissions.

The real explanation of these inferences, unquestionably rash, is to be found in the fact that the terms used were taken from the Chinese nomenclature of the various classes of subjects, of which only the laboring class was intended to be excluded, the other terms designating all the other classes of Chinese subjects known to Chinese society. The point was recently emphasized in an interesting and valuable article on this subject published in "The Outlook" on July 8, 1905, by Chester Holcombe, formerly secretary of the American Legation at Peking, and hereinbefore referred to as secretary and interpreter of this very treaty commission. He says on this point:

"To the authorities and people of China our regulations upon this subject have appeared all the more unjust, inexcusable and unnecessary because of the fact that for centuries they have possessed a system of class discrimination which is simple, clean-cut and universally understood. The Chinese text of the original exclusion treaty marks plainly the scope of its application and leave no point in doubt. While there is no such thing as caste known in the empire, and never has been, the entire mass of the population is ranged or divided into four classes, according to the profession, calling or occupation of each, and these have official as well as common recognition. The term 'shih, nung, kung, shang' is heard everywhere and seen in all their literature. It names these four classes, in order from the highest to the lowest in their social rank or scale, and is easily translated as 'scholars, farmers, laborers, merchants.' While this arrangement of graduation may seem strange to us, the Chinese have reasons, sound to them at least, for it. The 'shih,' educated men or literati, necessarily rank first and highest, since brains or intellect are better than the body. The 'nung,' embracing all who cultivate the soil, rank only second, because they are producers, and hence of high value to every community and the State at large. The 'kung,' in which class is included all labor, skilled and unskilled, is placed third, because by the use of hands and brains they transform the less useful into what is of greater value and service. Last and lowest of all come the 'shang,' covering all who are engaged in the immense variety of commercial operations. These are so placed because, thus occupied, they add nothing to the common wealth. They neither produce nor transform, but trade upon the labor and needs of others. They are simply the medium of interchange. In the Chinese text of the original treaty the right granted to regulate, limit and suspend immigration is confined in specific terms to the 'kung' alone, natives of the other three classes being guaranteed freedom to enter or leave this country at their pleasure, and assured of all of the rights and privileges granted to aliens of any other nationality while here."

Compare a similar utterance in Mr. Holcombe's work, "The Real Chinese Question," pp. 70-71. The United States commissioners having eliminated the class of "artisans," therefore adopted the prevailing view that the admission of all non-laborers had been provided for by a treaty which excluded only laborers, skilled and unskilled.

No other classes of non-laborers were under discussion even. Even without Mr. Holcombe's valuable contribution to this inquiry, I think it is easily demonstrable from this correspondence that only "laborers" were intended to be excluded, and all other classes were to continue to enjoy the right of entry and residence. Judge Ross, writing thirteen years after the treaty was signed, was not only unfamiliar with the argument adduced by Mr. Holcombe on this subject, but read this "correspondence" with the eye of an over-zealous, biased victim of anti-Chinese prejudice.

It is, however, furthermore in order to ask the question: Since when is it admissible to construe a treaty to which we have plighted our national troth, not by interpretation of the language found in the signed treaty, but by reference to the strained ex-parte reports of our own negotiators as to what was intended, but omitted from the signed treaty? A more vicious doctrine, calculated at every point to embroil us in international difficulties, can scarcely be formulated, and it is natural that such principles of treaty construction have so far been strictly confined to Chinese treaties, and in our lower courts. Fortunately, the Supreme Court of the United States has laid down canons of construction here applicable. In the case of *New York Indians vs. United States*, 170 U. S., 1, 23, Mr. Justice Brown, speaking for the Supreme Court, said:

"There is something, too, which shocks the conscience in the idea that a treaty can be put forth as embodying the terms of an arrangement with a foreign power or an Indian tribe, a material provision of which is unknown to one of the contracting parties, and is kept in the background to be used by the other only when the exigencies of a particular case may demand it. The proviso never appears to have been called to the attention of the tribe, who would naturally assume that the treaty, embodied in the President's proclamation, contained all the terms of the arrangement."

In the case of the *Amiable Isabella*, 6 Wheaton I, Judge Story, speaking for the Supreme Court, in holding that a treaty provision, in a treaty with Spain, referring to a form of passport as annexed, which was omitted from the treaty, could not be enforced by our courts, said in 1821:

"To alter, amend or add to any treaty, by inserting any clause, whether small or great, important or trivial, would be on our part an usurpation of power, and not an exercise of judicial func-

tions. It would be to make, and not to construe, a treaty. * * * The treaty does not leave it to the discretion of either party to annex the form of the passport; it requires it to be the joint act of both; and that act is to be expressed by both parties in the only manner known between independent nations—by a solemn compact through agents specially delegated, and by a formal ratification. * * * What reason has this court to presume that our government would have been satisfied with a passport signed by a colonial governor for want of royal passports? It has not been so stipulated in the treaty. It has not, in terms, dispensed with the annexation of the form of passport to the treaty. Even if one government had been willing to dispense with it, it remains to be shown that the other was also willing, and, if both were willing, it would still remain to be shown that the act of dispensation was consummated by a solemn renunciation; for the obligations of a treaty could not be changed or varied but by the same formalities with which they were introduced; or at least by some act of as high an import and of as unequivocal an authority.”

In *Tucker vs. Alexandroff*, 183 U. S., 424, 437, Justice Brown delivered the opinion of the court concerning a treaty with Russia, saying:

“As treaties are solemn engagements entered into between independent nations for the common advancement of their interests, and the interests of civilization, and as their main object is not only to avoid war and secure a lasting and perpetual peace, but to promote a friendly feeling between the people of the two countries, they should be interpreted in that broad and liberal spirit which is calculated for the existence of a perpetual amity, so far as it can be done, without the sacrifice of individual rights or those principles of perpetual liberty which lie at the foundation of our jurisprudence; where parties have entered into written engagements with express stipulations, it is manifestly not desirable to extend them by any implications, the presumption is that, having expressed some, they have expressed all the conditions by which they intend to be bound under the instrument.”

So also, in the case of *Fourteen Diamond Rings agt. United States* (183 U. S. 176), the Supreme Court declined to give effect to a Senate resolution adopted by that body on February 14, 1899, declaring that the ratification of our recent treaty of peace with Spain was not intended as an incorporation of the inhabitants of the Philippine Islands

into citizenship of the United States. Justice Brown, in his opinion in that case, says succinctly:

“Obviously, the treaty must contain the whole contract between the parties, and the power of the Senate is limited to a ratification of such terms as have already been agreed upon by the President, acting for the United States, and the commissioners of the other contracting power. Such resolution would be inoperative as an amendment to the treaty, since it had not received the assent of the President or the Spanish commissioners.”

Chief Justice Fuller, in delivering the opinion of the court in the same case, said: “The meaning of the treaty cannot be controlled by subsequent explanations of some of those who may have voted to ratify it.”

Moreover, where negotiations are carried on with a foreign power, where there isn't even a common medium of expression, and hence innumerable opportunities for misunderstanding arise, the language of the Supreme Court in the *Trans-Missouri Freight Association* case (166 U. S. 318), where it was sought to establish an intent to exclude railroads from the operation of the Sherman Anti-Trust act by reference to the legislative history of the act and committee reports and debates in Congress concerning it, is particularly applicable; Justice Peckham said there, for the court:

“There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. * * * The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it, by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed.”

So much, then, for the attempted inference from the treaty negotiations that an exclusive enumeration of classes of non-laborers was established. As already shown, I think, the reports of the negotiations establish the very opposite. President Roosevelt in his recent message frankly urges a change in our existing policy, assuming that the law as it has been administered during the last ten years embodies such

exclusive enumeration theory; it is believed, however, that it has been demonstrated that a new treaty excluding only "manual laborers" is demanded, not merely by public policy, but by law, treaty faith and the immutable principles of justice and right.

NOTE

I cannot resist the temptation of quoting a personal letter which I received right after this article was first published, approving of my views, from Prof. John Bassett Moore, our ablest American authority on international law, author of "A Digest of International Law," formerly Counselor of the State Department and Judge of the World Court. Under date of January 17th, 1906, he wrote to me: "Many thanks for your courtesy in sending me a copy of your excellent article in the *Tribune*. The course of the Government in changing its construction of the treaties and exclusion acts, by holding that all persons were 'laborers' who were not specifically exempt, seemed to me at the time to be most unfortunate. The decision in the Ju Toy case is a fit culmination of the unwisdom with which the subject has been handled." With respect to the Ju Toy case (198 U. S. 253), the U. S. Supreme Court, including the spokesman of the Court, in the case in question, Mr. Justice Holmes, soon recognized the need of limiting this decision, and in the leading Chin Yow case (208 U. S. 8), by the same distinguished spokesman, it held unanimously in 1908 that an administrative refusal to afford an alleged American citizen an opportunity to adduce evidence of his claimed American citizenship, required judicial review on habeas corpus of the claim, despite the statute making immigration officials' determination non-reviewable in the courts. In my own case of Gegiow vs. Uhl 239 U. S. 3 (1915), the non-reviewability statute was limited to questions of fact, as distinguished from law, and even absence of all evidence of disability was held to present a question of law in an exclusion case. Judge Holmes also concurred in the opinion of the Court, written by Judge Brandeis in Ng Fung Ho vs. White 259 U. S. 276, holding that there is a constitutional right to a judicial determination, where the alleged Chinese alien has entered the country and is being proceeded against in deportation proceedings, and presents evidence which would suffice (if credited) to establish American citizenship. So also, despite laws against admitting non-naturalizable Asiatics in general, the action of immigration officials in excluding the wife of a Chinese merchant was reversed, in view of our treaty with China, even under our present quota laws in Cheung Sum Shee vs. Nagle, 268 U. S. 336, though the Chinese foreign-born wife of an American citizen of Chinese descent is permanently barred (Chung Chan vs. Nagle 268 U. S. 346).

IMMIGRATION OF UNACCOMPANIED MALES

Unpublished correspondence with President Eliot concerning Immigration of Males unaccompanied by Wives and Children relating to an Intended Section of His Report "Some Roads Towards Peace," 1912*.

August 22, 1912.

Dr. Charles W. Eliot,
Cambridge, Mass.

My dear Sir:—

I have read with much interest interviews with you in the newspapers concerning your recent trip to the East and your observations on immigration. You are undoubtedly right in deploring the fact that practically no women from the Orient come to the United States. As far as the Chinese women are concerned, your attention has possibly not been called to the fact that for many years the immigration of Chinese women was in effect totally stopped by the Government, and that under the existing law, only wives of merchants and other non-laborers and their minor daughters are permitted to enter.

The decision of the United States Supreme Court in the case of *U. S. vs. Mrs. Gue Lim*, 176 U. S., 459 (1900) for the first term, compelled our administrative officers to admit Chinese women even of the mercantile class, the administrative officers and most of the courts between 1884 and 1900 having held that they were inadmissible. Even now, wives and daughters of Chinese laborers are regarded as inadmissible. Of course, under these conditions Americanization becomes practically impossible.

I note with interest your suggestion that not more than approximately five percent in excess of male over female immigrants of any nationality, should be admitted, but we find in practice that such rule would work much harm. A very large percentage of our immigrants, particularly the Jewish immigrants, are in the habit of arranging to have the head of the family come over first and establish a home here and save enough to then send for his family. Such heads of families are in very many cases unable to have their families accompany them when they first come over, and they would, moreover, be greatly hampered when first coming over here in the struggle for existence, if they had to provide in new and un-

* Carnegie Endowment for International Peace.

tried surroundings for wives and children. The recommendation looking to such regulation made by the Immigration Commission has, therefore, been strongly opposed by many of us.

Very truly yours,

MAX J. KOHLER.

Asticou, Maine,

August 26, 1912.

Dear Sir :

Will you kindly send me a copy of the regulation proposed by the Immigration Committee on the subject of the proportion between male and female immigrants to the United States?

It would be a part of my suggestions that the law about contract labor should be so modified as to allow families to come over on pre-arranged terms.

Sincerely yours,

CHARLES W. ELIOT.

Max J. Kohler, Esq.

Dr. Charles W. Eliot,

Asticou, Maine.

August 30, 1912.

Dear Sir :—

Your letter of the 26th inst. is at hand.

The recommendation of the national Immigration Commission which I refer to, as to limiting the admission of unmarried men or men without children, is to be found in the pamphlet entitled "Brief Statements of the Investigations of the Immigration Commission with Conclusions and Recommendations, and View of Minority," reprinted in Volume I of "Abstracts of Reports of the Immigration Commission," pages 47-8. The Recommendations are reprinted in "Jenks and Lauck's—The Immigration Problem," pp. 332-3.

I am sending to you herewith, under separate cover, "Recommendations" made by various Jewish bodies to the Immigration Commission contained in the 4th Annual Report of the American Jewish Committee, on pages 38-39, of which you will find such suggestions criticized; also an address of mine, as to which, see pages 16-17. I have grave doubts as to the wisdom of a pro tanto repeal of our Contract Labor Laws, and doubt the possibility of securing such legislation in any event.

Very truly yours,

MAX J. KOHLER.

August 31, 1912.

Dr. Charles W. Eliot,
Asticou, Maine.

Dear Sir:—

It occurs to me, supplementing my letter to you of yesterday, that you may find it inconvenient at present to examine the report of the Immigration Commission which I cited, and accordingly I quote the passages herein; they read as follows:

“As far as possible, the aliens excluded should be those who come to this country with no intention to become American citizens or even to maintain a permanent residence here, but merely to save enough, by the adoption, if necessary, of low standards of living, to return permanently to their home country. Such persons are usually men unaccompanied by wives or children. * * * * *

The following methods of restricting immigration have been suggested: * * *

(b) The limitation of the number of each race arriving each year to a certain percentage of the average of that race arriving during a given period of years.

(c) The exclusion of unskilled laborers unaccompanied by wives or families. * * * * *

(g) The levy of the head tax so as to make a marked discrimination in favor of men with families.”

Very truly yours,

MAX J. KOHLER.

Asticou, Maine,
September 11, 1912.

Dear Mr. Kohler:

I was much obliged to you for your two letters of August 30 and August 31. These two, and your previous letter of August 22 have given me much food for thought. May I describe to you what seem to me the important aspects of the whole question, and ask you to give me your comments on the description?

Looking at the numerous migrations of laboring people from one country to another in hope of better wages or better conditions of labor, I find the greatest evil connected with these migrations, no matter where they occur, to be the moving of masses of single men without any women of their own race or stock, or with but a small proportion of such women. These men are apt to be herded in rude barracks, to be

fed, or to feed themselves, on very low terms, and to be provided with no means of decent pleasure or recreation. The moral and physical results are hideous. It does not matter whether these migrants move of their own accord, or are assisted to move by governments, commercial companies, or private speculators. Given a migration of single men in considerable numbers without women, and the gravest social damage will inevitably ensue. The same evils develop in and about garrisons in time of peace, and they have been familiar in the pioneering line on the American continent generation after generation, wherever male pioneers were grouped and were accompanied by but few women. All other evils connected with migration are small compared with this. For instance, the movement of large numbers of young laborers from their country to a country where they can earn higher wages, and their return home, after some short stay, carrying with them considerable sums of money, is regarded by some Americans as an evil which should be prevented by legislation; but this evil, if it be one, is insignificant compared with the coming of thousands of single men who live herded together under bad conditions, and do not permanently return to their native lands, but fester in a mass by themselves and poison their surroundings.

The only safe and desirable migration is the migration of men, women, and children all together, who will live a family life in the new home, and preferably, a family cottage-life. If America could secure this kind of immigrant, and no other, except some small proportion of enterprising young single men who come as prospectors, the whole country would soon realize that immigration, under no other restrictions than those which now exist by law, is an advantage to the entire country, as well as to the people who seek here a happier lot than they have found in their native lands. Then, the efforts to restrict immigration would cease, and the Americanizing of immigrant families would go on more rapidly than it does now.

By what changes in our laws can this family mode of immigration be promoted, without injury to the kind of immigration which you think desirable, as, for instance, the coming over of the head of a family, alone, to establish a home here and save enough then to send for his family? It would clearly be desirable to repeal all legislation which impedes or prevents the admission of wives and daughters with their men. Next, it would be possible to lower the head tax in favor of men with families. Thirdly, it would be expedient to permit a skilled laborer who is the head of a family to contract to work for a given

corporation, firm, or person for a short period not exceeding six months or a year, at wages not below the existing standard in the factory or shop to which he agrees to go; provided that he bring his family with him; and lastly, it would be possible to enact that the excess of males over females in any actual group of immigrants should never exceed ten per cent, men, women, and children being counted.

I believe that the measures above described would raise the quality of immigrants the world over, improve their services to the communities to which they go, and prevent migrations from being what they are now, sources of irritation and strife among nations. I should be very glad of your views concerning the wisdom and practicability of the measures above suggested.

Very truly yours,

CHARLES W. ELIOT.

Max J. Kohler, Esq.

SOME ASPECTS OF THE IMMIGRATION PROBLEM*

Bolingbroke's famous statement that "history is philosophy teaching by example," is particularly applicable to the American immigration problem, for it is only in the light of our own history that we can attempt to solve a question involving so many diverse, complicated, and elsewhere unprecedented factors. President Cleveland, in his famous veto message of the immigration bill of 1897, ably gave expression to this idea in pointing out that "a contemplation of the grand results" of our immigration policy precludes our regarding it "as an original proposition and viewed as an experiment," merely. Substantially all the arguments advanced against our present policy of *regulating* immigration, as distinguished from the new schemes to *restrict* it, are based upon unwarranted and commonly sweeping assumptions, or an imperfect reading of our history and of the history of the agencies for the Americanization and assimilation of the immigrants. Few students of the immigration question have studied the general subject and its factors historically with any degree of thoroughness. The exponents of restriction have frequently been either politicians and advocates appealing to or swayed by popular prejudices, or economists with only slight familiarity with this branch of our national history, and still less familiar with the development and extent of our present-day Americanizing agencies, or with the history of the "new" immigrant races in our midst, whom they distrust. Nor is this strange, in view of the fact, pointed out by Professor Callender in an article on "The Position of American Economic History,"¹ that even our trained historians have greatly neglected such fields in our economic and social history in general—an observation particularly applicable to the innumerable agencies scattered throughout our country, which are working for the welfare of the immigrant, and which have developed since 1881, the date commonly assigned as marking the beginning of our present era of new immigration from southern and eastern Europe. Dogmatic reiteration gives the semblance of proof; and it is remarkable how many erroneous or unproven statements are current in this field.

The national Immigration Commission conducted substantially all its investigations in terms of race, and adopted as its ultimate conclu-

* *American Economic Review*, Vol. IV, No. 1, March, 1914.

¹ *American Historical Review*, October, 1913, p. 80.

sion or assumption the view (unproven by its own investigations) that the new immigration, unlike the old, requires restriction and not merely regulation. There was very little historical investigation made by the commission; there were no public hearings for discussion of remedies by experts; and no effort was made to study the economic and social conditions which the "old" immigrant encountered, and substantially none to study the innumerable present-day Americanizing agencies, comparing them with the scanty ones of the former period and weighing the effects of their relative potency and success. The old immigrant, because more closely related to us in point of race-stock and language, is assumed to have been rapidly and readily assimilated and to have created high American standards of wages and living, while greater differences of race and language are assumed to lead to the opposite result as to the new immigrants. In this way, the conditions attending the arrival of the old immigrant (almost absolutely the same as the new immigrant now encounters) are conveniently ignored, or sunk in a mythical Golden Age, now past; and present-day Americanizing agencies are overlooked.

Professor Henry P. Fairchild, in his newly published work on *Immigration*² unlike most other recent restrictionist writers who have commonly followed in the wake of the Immigration Commission, out-heroding Gen. Walker, argues that until our Revolutionary War, we had practically no "immigration" at all, the arrivals being substantially all "colonists" of English or allied stock, Protestant in creed, and therefore homogeneous and English;³ that then our American institutions were established, and the immigrants who have since come over, being of other race or creed, have jeopardized our American institutions, economic, political, and social; and have merely prevented a corresponding or even greater native growth, which, presumably, because of the "superior" English stock, would have accomplished far more than even the old immigration accomplished.⁴

Is it true that the large immigration of our day results in a larger percentage of increase of foreign-born in our country than heretofore? The Immigration Commission shows that the decade of 1850 to 1860 was marked by an increase of 84.4 per cent foreign-born, the largest in our history, while from 1890 to 1900 there was an increase of only 11.8 per cent, the smallest since our census takers began to compile such returns, in 1850.⁵ Even during the decade 1900 to 1910, the percentage

² Macmillan, 1913, pp. ix, 455.

³ Henry Pratt Fairchild, *Immigration*, pp. 27 *et seq.*, 51-2.

⁴ *Ibid.*, pp. 163-4, 222 *et seq.*, 341 *et seq.*

⁵ *Reports of the Immigration Commission*, 1911, vol. I, p. 123.

of increase was only about 30.7 per cent as compared with 38.5 per cent for the decade from 1880 to 1890.⁶ Nor has the percentage of foreign-born in our total population varied greatly during recent decades, ranging from 13.2 per cent in 1860 to 14.7 per cent in 1910, and at intermediate decades being 14.4 per cent, 13.3 per cent, 14.7 per cent, and 13.6 per cent.⁷ The ratio of male to female immigrants for the past decade appears appreciably larger than it is in fact, because so many male immigrants who would normally have sent for their families returned to Europe instead, during the panic period of 1907 and thereafter, and were counted once more when they returned unattended in better times; and because the number of domestics immigrating has latterly decreased largely, though concededly a larger number of the new immigrants than of the old come over unaccompanied by their families and are less disposed to send for them promptly.

Professor Fairchild, in support of his thesis that immigration was practically a negligible factor before 1820 during the building of the nation, quotes⁸ Professor Commons that "it is the distinctive fact regarding colonial migration that it was Teutonic in blood and Protestant in religion," and adds:

The English element, then, was sufficiently pre-eminent to reduce all other elements to its type. As a result of the character of the migration assimilation was easy, quick, and complete. . . . The whole coast, from Nova Scotia to the Spanish possessions in Florida, was one in all essential circumstances. Such, then, was the American people at the time of the Revolution—a physically homogeneous race composed almost wholly of native-born descendants of native-born ancestors, of a decidedly English type . . . upon which all subsequent additions must be regarded as extraneous grafts.

From historical investigations, however, we learn a different story. Bancroft, many years ago, said:⁹ "The United States were severally colonized by men in origin, religious faith, and purposes as varied as their climes." Differences in language, customs, education, and views, on the one hand, and lack of assimilative agencies here, on the other, made the Germans, Swiss, Swedes, Dutch, and Irish immigrants com-

⁶ *Abstract of Thirteenth Census*, p. 188.

⁷ *Ibid.*, p. 80.

⁸ *Immigration*, p. 51.

⁹ I quote from A. Maurice Low's stimulating work, *The American People—A Study in National Psychology*, vol. 1, p. 275, whose second volume contains particularly interesting chapters entitled "The Influence of Immigration on American Development" and "Manners and the Immigrant."

ing over before 1881 no whit less easy to assimilate than are the new immigrants in our own day: and the extent and degree of these differences and difficulties were emphasized again and again, about sixty years ago, by Know-nothings and their predecessors, in substantially the same terms used by the restrictionists, in our own day. In the former period the "Teutonic stock theory" was not available as a test of desirability of immigrants, because members of this great stock were then being abused by the provincialists, but today, consistency presumably requires that the Irish be placed in the Teutonic class.¹⁰

It has been well pointed out that, despite specious attempted distinctions between immigrants and colonists, we are all immigrants or descendants of immigrants here, all except the American Indian. Edward Everett, in a classic lecture on "The Discovery and Colonization of America and Immigration to the United States," delivered in 1853, sums up our entire history as an achievement of immigrants.

It is true that some sections of our country, notably New England, frowned upon all new arrivals, English or continental, Episcopalian as well as Catholic,¹¹ but most of the colonies and states welcomed the immigrant and realized the advantages likely to be reaped from his coming. This issue has been raised ever since the beginning of our government. Senator Maclay of Pennsylvania, in describing the debates on the naturalization bill of 1790 in the United States Senate, amusingly said: "We Pennsylvanians act as if we believed that God made of one blood all the families of the earth; but the eastern people seem to think that he made none but New England folks." James Wilson, in the Constitutional Convention of 1787¹²

cited Pennsylvania as proof of the advantages of encouraging immigration. It was perhaps the youngest (except Georgia) settled on the Atlantic, yet it was at least among the foremost in population and prosperity. He remarked that almost all the general officers of the Pennsylvania line of the late army were foreigners. And no complaint has ever been made against their fidelity or merit. Three of her deputies to the convention (Robert Morris, Mr. Fitzsimmons, and himself) were not natives.

¹⁰ See *Industrial Commission Reports*, vol. 15, p. 480 *et seq.*; and *Immigration Commission Reports*, vol. 41, pp. 208-9, 221-5; also Hourwich, *Immigration and Labor* (Putnam, 1912), pp. 61-81.

¹¹ See Proper, *Colonial Immigration Laws*; Fairchild, *Immigration*; Capen, *Historical Development of the Poor Laws of Connecticut*.

¹² *Documentary History of the Constitution*, III, p. 509. Compare James Madison's statement in the same convention: "That part of America which had encouraged them (the foreigners) most, has advanced most rapidly in population, agriculture, and the arts."

The Declaration of Independence recited, as one of the grievances of the colonies against the king, that "he has endeavored to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their immigration hither," and in August, 1776, Congress adopted a comprehensive committee report to the same effect.

But, to return to the non-English elements of our population at the beginning of our national government and in colonial days, the extent of this immigration and the difficulties of assimilation in that day have both been greatly minimized. We had no really comprehensive study of colonial censuses until Professor F. B. Dexter published his *Estimates of Population in the American Colonies*, in 1887; and no basis for scientific study of race-stocks, until the returns of the first census were published in detail and analyzed in *A Century of Population Growth*, in 1909. As most of our early American historians were New Englanders—and in New England the immigrant was comparatively unknown until very recently—it is natural that they should have underestimated the extent and influence of foreign factors before 1881. Professor William Z. Ripley, however, writing on "Races in the United States,"¹³ understates rather than overstates the facts, when he says, on the authority of Bancroft's *History*¹⁴ that "for the entire thirteen colonies at the time of the Revolution, we have it on good authority that one-fifth of the population could not speak English, and that one-half at least was not Anglo-Saxon by descent."¹⁵

¹³ *Atlantic Monthly*, December, 1908, p. 745.

¹⁴ Vol. VII, p. 355.

¹⁵ Contrasting this with our present-day condition, we find that in 1900 only 1,217,280 of all our foreign-born residents over 10 years of age, or 12.2 per cent, could not speak English, which percentage had decreased from 15.6 per cent for 1890 (*Imm. Comm. Reports*, I, p. 160). This gives just about the same percentage now unable to speak English as at the time of the Revolution! The Census Bureau, solely on the basis of family names, estimated in *A Century of Population Growth* (pp. 116-121) that 82.1 per cent of our population in 1790 was of English stock, 7 per cent Scotch, 1.9 per cent Irish, 2.5 per cent Dutch, 0.6 per cent French, 5.6 per cent German, and 0.3 per cent "all others" (including, on the basis of the states for which we have actual returns, 1-20 of 1 per cent Hebrews). Professor A. B. Faust in his *German Element in the United States* (I, pp. 280-5) estimates the German stock at the outbreak of the Revolution at 225,000 or a little more than one-tenth of the total white population; and with the aid of Professor Walter F. Willcox estimated our German population in 1790 (II, pp. 5-27), also on the basis of family names, at 375,000, say 360,000, and of the Dutch at 240,000, or a total of 600,000, as compared with an estimate by the distinguished German statistician, Professor Bockh, of 800,000, or about 19 per cent of the total white population. Professor Faust calls attention to the inadequacy of a name test, even when made by an expert (II, p. 13), which results in disregarding many Anglicized names, such as Carpenter, Smith, Miller, etc. Moreover, only names occurring 100 times or more were included by the Census Bureau expert, and this leads to necessary omission of many names.

Mr. Proper, in his valuable work *Colonial Immigration Laws*, deals with attempted colonial legal regulation of immigration, chiefly in the direction of attempting to exclude convicts (many thousands of whom arrived in the eighteenth century), and paupers, and the physically unfit, and how these efforts were largely thwarted by the Crown's veto power, as also by the British policy of discouraging immigration, shortly before the Revolution. Valuable historical legal material from England's point of view, supplementing this study, is to be found in William F. Craies' interesting article, "Compulsion of Subjects to Leave the Realm."¹⁶ Mr. Proper mentions, but does not consider in detail, the different nationalities included in our colonial immigration; calls attention to the fact (p. 70) that the Carolinas and Georgia "at the outbreak of the Revolution, had a greater number of foreign-born inhabitants than any other three of the colonies"; and concludes that (p. 84) "much that is best and noblest in America is a monument to the superior mental and physical constitution, the vigor and deep religious faith of the foreign immigrants" of colonial times.

As above noticed, the Irish figured as a considerable factor in our population even before 1790. Burke in his *European Settlements in America* refers to the large number of Irish settling in 1750-1754 in Virginia, Maryland, and the Carolinas; and many thereafter settled in Pennsylvania. The heavy colonial immigration of Irish, French, Spanish, and others, and of English and German Catholics, to say nothing of the sprinkling of Jews, also rebuts Professor Fairchild's assertion that the country at the close of the Revolution was homogeneously Protestant.¹⁷

¹⁶ *Law Quarterly Review*, vol. 6, pp. 388-409.

¹⁷ See Gen. Walker's article, "Growth and Distribution of Population," in Harper and Brothers' *First Century of the Republic*; also Emmet, "Irish Immigration during the Seventeenth and Eighteenth Centuries," in *Journal of the American Irish Historical Society*, vol. II; O'Meagher, "Irish Immigration to the United States since 1790," *idem*, vol. IV; Byrne, *Irish Emigration to the United States*; *Catholic Encyclopedia*, article on "Migration" and bibliography and related articles; Callender, *Selections from the Economic History of the United States*; series on foreign elements in American history by Goebel, Colenbrander, Putnam, and Shepherd, in *Report of the American Historical Association* for 1909; series by Casson, in *Munsey's Magazine*, vols. 34, 35, on different elements in American history; Commons, *Races and Immigrants in America*; Schurz, "True Americanism," in *Speeches, Correspondence and Political Papers*; Fosdick, *French Blood in America*; Flom, *Norwegian Immigration into the United States*; Learned, *The Early Immigration and the Immigration Question of Today* (Pa. German Soc. Pubs., XII); Grace Abbott, "Bulgarians of Chicago," *Charities*, vol. 21, p. 653; also her article on "Immigration," in *The Survey*, Jan. 7, 1911, as well as article on "Immigrants in Cities," by E. A. Goldenweiser, in same issue; also Bushee, *Ethnic Factors in the Population of Boston*.

In colonial days the heaviest race-stream was made up of the German immigrants. William Penn invited them to settle in Pennsylvania immediately after that territory was granted to him, and they became an important element in the population from the founding of Germantown in 1683, becoming very numerous after the Palatine persecutions early in the eighteenth century. Benjamin Rush wrote in 1789 a valuable and unbiased account¹⁸ of the German population before our first census. He quotes¹⁹ Governor Thomas of Pennsylvania as saying in 1747 that the Germans of Pennsylvania were three fifths of the whole population (of 200,000) and that "they have, by their industry, been the principal instruments of raising the state to its present flourishing condition, beyond any of his Majesty's colonies in North America"—and nearly all came over as redemptioners or indentured servants. As early as 1790, five sixths of East Pennsylvania was German.²⁰ Rush himself emphasizes their enormous value in developing agriculture throughout the colonies. Professor Geiser has correctly observed²¹ that from 1728 to the end of the century "the history of immigration is practically that of servants (indentured or redemptioners) under various conditions," a statement confirmed by Kapp,²² and it is shown by von Fürstenwärther²³ to have been true as late as 1818. The German immigration to Pennsylvania was so great, as early as 1718, that fears were at first entertained that it would cease to be a British province, and the governor was compelled to veto a bill forbidding further immigration into Pennsylvania, "because of its cruelty."²⁴

In general, though almost everything stood in the way of assimilation, these German immigrants were promptly assimilated. In exceptional cases, however, like that of the "Pennsylvania Dutch," they remain alien, even after one hundred and fifty years down to our own day. Franklin observed in 1759 that "the labor of the plantations is performed chiefly by indentured servants, brought from Great Britain, Ireland, and Germany; because of the high price it bears, it cannot be

¹⁸ *Account of the Manners of the German Inhabitants of Pennsylvania*, edited by I. D. Rupp.

¹⁹ *Ibid.*, p. 5.

²⁰ *Ibid.*, p. 13, note.

²¹ *Redemptioners and Indentured Servants in the Colony and Commonwealth of Pennsylvania*, pp. 25, 41.

²² *Immigration and the Commissioners of Emigration of the State of New York* (1870), p. 9.

²³ *Der Deutsche in Nord Amerika*, outlining the author's mission to America for the sole purpose of studying immigration conditions of that day.

²⁴ S. H. Cobb, *The Palatine or German Immigration to New York and Pennsylvania*, p. 30.

performed any other way." And it is to specialized studies of the system of indentured servants or redemptioners in the colonies that we must turn for knowledge of the position of the early immigrants in general.²⁵

It is difficult to conceive of any system less calculated to promote assimilation than this "indentured servant" system in colonial days, under which non-English-speaking individuals and families were brought over to be sold into a form of slavery for a term of years to pay their passage money; who came in quantities not limited by any demand, so that prices were arbitrarily high or low; who were not permitted to return, because the only possible profit in the venture arose from keeping them here; and who were often obliged as a condition of emigrating to renounce the right to return to their native homes; whose time was not their own during the years of their involuntary servitude, so that even the primitive schooling then possible was practically denied them; and who were politically, economically, and socially segregated from their masters. Truly, the historical student cannot agree that the colonists were "a homogeneous lot of Englishmen and Protestants"; and it is part of our miraculous history that agencies then brought into action (and which are today more, not less, potent) have resulted in our quick and healthy absorption of the immigrant.

Our earliest accurate immigration records begin in 1820, under the federal law of 1819, though there is a recent estimate which indicates that 345,000 aliens arrived between 1776 and 1820, an estimate none too high, when we consider the unrest caused by the reactionary conditions following the downfall of Napoleon, and European famines of this period, as well as systematic stimulation of immigration to the new land of freedom and political and economic equality. The act of 1819 also sounded the deathknell of the redemptioner system, as its provisions for decent treatment and adequate space aboard ship rendered the old methods hazardous and unprofitable.

II

The period from 1820 to 1881 was marked by a continuance of the same stream of immigrants that had characterized the earlier period, except that the numbers became somewhat greater, by reason of financial depression abroad, famines, and occasional political and religious unrest,

²⁵ See Geiser, *op cit.*; Faust, *op cit.*; Ballagh, *White Servitude in the Colony of Virginia*; and Byrd, "Slavery and Indentured Servants," in the *American Historical Review*, vol. I, p. 88.

on one hand, and superior industrial and political opportunity here, on the other. Kapp, writing as far back as 1870, well said that "the territory which constitutes the present United States owes its wonderful development mainly to the influx of the poor and outcast of Europe;"²⁶ and he noted a fact which could be fully recognized only since we began to collate accurate statistics of emigration from the United States in 1907—that "bad times in Europe regularly increase, and bad times in America invariably decrease, immigration."²⁷ The figures he presents as to the illiteracy of the immigrants of 1868, made up almost wholly of German, Swiss, Irish, Scotch, and English,²⁸ are interesting as being substantially the same as prevail today; 7,397 immigrants for whom positions were secured, out of 31,143, could neither read nor write, there being 3,096 illiterate males out of 18,114, and 4,301 females out of 13,029. There were 2,714 Irish, Scotch, and English illiterates out of 9,269; and out of 23,315 Irish, Scotch, and English female servants 7,682 could neither read nor write.

In J. B. Angell's review of the books of the German traveler Löher, dealing with his German-American compatriots of the middle of the nineteenth century,²⁹ we read of the German "brawler and ruffian in Philadelphia" and the "tumultuous haranguer and street-fighter of New York." He adds:

Many a German is amazed and grieved at the great moral contrast between multitudes of immigrants and the quiet citizens of his ancient home. The cause is apparent. The tares are suffered to grow with the wheat. No hundred-handed police repress every budding vice. Even the reaction which is natural after escape from governmental oppression is not at all checked.

The large number of inmates of German jails and workhouses aroused special comment.

Conditions among the Irish here at that time were, of course, far worse, in view of the Irish potato-famine, general Irish economic distress and conditions of living, lack of school facilities, and governmental neglect.³⁰

The Immigration Commission and numerous restrictionists endeavor

²⁶ *Immigration and the Commissioners of Emigration of the State of New York*, p. 5.

²⁷ *Ibid.*, p. 17.

²⁸ *Ibid.*, pp. 116-117.

²⁹ *North American Review*, vol. 82 (Jan., 1856), pp. 248-265.

³⁰ Compare Walker, *Discussions in Economics and Statistics* (edited by D. R. Dewey), vol. II, p. 472.

to show that persecution, which drove so many people here in the past, is no longer an important factor; but the truth is that during the nineteenth century this factor was practically negligible as compared with the persecutions driving the Jews, Finns, Poles, and Armenians over in our day.³¹ Throughout our national history, superior economic opportunity has been the chief inducement of immigration.

During the period from 1821 to 1881 over 10,000,000 immigrants came to this country, and in the period from 1881 through 1910 over 17,000,000 more, these figures making no allowance for returning immigrants or immigrants coming again. The average of 13,802 per year for the decade 1820 to 1830 rose to 59,913 per year for the following decade, and to 171,235 per year between 1841 and 1850, 259,524 per year the next decade, then fell to 231,482 to rise again in successive decades to 281,219, 524,661, 368,756, and to 879,539 per year for the last decade. In 1842 the hundred-thousand mark was passed, and in 1905 the million mark.³² The reports of the Commissioner General of Immigration show that from 1820 to 1912 the various countries sent us immigrants in the following numbers:³³

	1820-1912	Since 1881
Netherlands	190,954	143,746
France	487,504	171,262
Switzerland	244,364	155,052
Scandinavia	2,014,245	1,603,178
Italy	3,426,377	3,345,096
Germany	5,411,444	2,359,469
Great Britain and Ireland.....	7,951,671	3,410,049
Austria	3,510,379 ¹	3,429,634
Russia	2,712,316	2,704,815
Other countries	3,661,000	

¹ Since 1861.

These figures show that although the countries of northern and western Europe no longer furnish the same percentage of immigrants as before 1881, they continue sending appreciable numbers; and, on the other hand, they indicate that the countries of southern and eastern Europe had sent us some immigrants long before 1881. They reflect

³¹ The reader who seeks an interesting historical analysis of the motives of nineteenth century immigration may find much light in a paper by Thomas W. Page on "Causes of Earlier European Immigration to the United States" in *Journal of Political Economy*, vol. 19, pp. 677, 685 *et seq.*

³² Vol. 3 *Reports Imm. Comm.*, pp. 4, 5.

³³ For figures of 1912, see *Report*, p. 80.

also the great economic development of the countries of western and northern Europe, which accounts for decrease of immigration from there, and the economic backwardness and religious and political persecution of the southern and eastern countries.

This is not the place to enlarge on the invaluable services rendered by the immigrants to this country from 1820 to 1881; neglected as the subject is, no candid student can deny that to them we owe much of our great development and prosperity, and that their patriotism has always been at our command.³⁴ Nor should we be misled by the occasional former criticism of the "old" immigrant, and the dangers that beset our country in the past; the sober sense of the country always welcomed the immigrant, and recognized his value. Particularly outspoken on this point have been such great statesmen as Washington, Jefferson, Madison, Lincoln, and Cleveland, despite efforts of restrictionists to unearth an occasional passage indicating that one or more of these leaders realized that possible dangers also beset us from the immigrant. The anti-French feeling of John Adams' administration led to the passage of our Alien and Sedition laws, it is true, but that very issue drove the Federalists out of power for decades; and the Republican platform of 1800 foreshadowed Jefferson's famous presidential message of 1801, which laid down our established national policy in the rhetorical question: "Shall we refuse the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our forefathers arriving in this land? Shall oppressed humanity find no asylum on this globe?" Time and again, this policy was reaffirmed in Congress, in the press, and in national party platforms; our ministers abroad were even instructed to seek to remove obstacles to emigration³⁵ and President Lincoln induced the passage of a bill to encourage immigration and to furnish free transportation into the interior. The incident of the Know-nothing movement was due chiefly to religious prejudice, and soon passed away. The *History of Immigration Investigation and Legislation*, prepared by the Senate Committee on Immigration, dated February 22, 1893, correctly states (p. x) that "from the foundation of the government until about the time of the passage of the national statute of 1882 the prevalent sentiment seemed to be the encouragement of immigration." The Chinese exclusion agitation in the seventies first led to the organization of labor-union sentiment against admission of the

³⁴ See particularly Coman, *Industrial History of the United States*; Kapp, *Immigration and the Commissioners of Emigration*; Low, *American People*; Bryce, *American Commonwealth*; Faust, *German Element*.

³⁵ *Niles' Register*, vol. 65, p. 265.

Chinese; and subsequently to the present-day agitation for restriction of all immigration.

The argument that immigration has decreased the native American birth-rate and precluded an increment of native population as great or even greater, scarcely merits serious consideration; much less does the extraordinary assumption that the possible increment thus displaced would have accomplished more for us than did the immigrant increment.³⁶ The Census Bureau, in its work *A Century of Population Growth* (pp. 85-9), concludes that by 1900 immigration contributed thirty million souls to our population and forty billion dollars to our wealth.

III

Of the immigrants of the period 1899-1910, 26.7 per cent of those fourteen years old or over could not read or write (35.8 per cent of the new immigrants and 2.7 per cent of the old).

The percentage of illiteracy in each group was as follows:

South Italians	53.9	Bohemians and Moravians..	1.7
Hebrews	26.	English	1.
Polish	35.4	French	6.3
Lithuanians	48.9	Germans	5.2
Croatian and Slovenians....	36.1	North Italians	11.5
Greeks	26.4	Irish	2.6
Russian	38.4	Welsh	34.9

The government figures for the fiscal year 1912 show that 63 per cent of the immigrants for that year were males, and that 21 per cent of the males over 14 years old were illiterate, and nearly 25 per cent of the females. The Immigration Commission, in its report on "Emigration Conditions Abroad" shows, however, that the percentage of literacy among the immigrants from southern and eastern Europe is very much higher, in general, than that for those foreign countries at large, indicating that we still get the more intelligent and enterprising of such races. Even in these countries, people are now reasonably

³⁶ Dr. Hourwich satisfactorily disposes of this argument in his work *Immigration and Labor*, pp. 221-7, by showing that the decrease of the birth-rate is a universal phenomenon today, and is particularly marked even in Australia, where there has been practically no immigration latterly; Gen. Walker seems first to have formulated the theory (*Discussions in Economics and Statistics* II, pp. 417 *et seq.*, 437), but, aside from the fact that the world-wide character of this decrease was not then recognized, Gen. Walker had himself previously scientifically explained the decreasing birth-rate quite differently (*Id.* II, p. 29 *et seq.*, especially pp. 42-3, 44, 195, 204; also his essay in *The First Century of the Republic*, pp. 235-6).

familiar in practice with the exercise of suffrage and representative government.

It is time that we turned to authorities who are familiar with the new immigrants in our midst, their past experiences here, and the agencies open to Americanize them, for light on this problem. Immigrants from nearly all of the various races from southern and eastern Europe have been settled here for many years, and we learn almost uniformly that there has been little difficulty in Americanizing and assimilating them. For example, *The Italian in America*, by Lord Trenor and Barrows reminds us how much we owe to the Italians from Columbus down to our own day. Italian settlement throughout the nineteenth century, especially in agriculture, only awaits a competent chronicler to show that it does not indicate difficulty of Americanization. Professor Balch, in her excellent work *Our Slavic Fellow Citizens*, outlines many decades of worthy citizenship on the part of Poles and Bohemians in America, running back to valuable services during our Revolutionary War. The same is true of the Jews in America, and of other races included among the new immigrants, all of which refutes the unwarranted assumptions of the restrictionists. The investigations of the Immigration Commission, especially with respect to our school rolls, also bear this out.

Disinterested social workers who have devoted their lives to studying these new immigrants find that they are being rapidly absorbed, and are valuable increments to our population. It is time that we heeded the observations of capable students at close range, such as have been made available in valuable studies by Jane Addams, Lillian D. Wald, Peter Roberts, Emily Balch, Grace Abbott, Edward A. Steiner, and others.

Moreover, we are apt to overlook the fact that over 80 per cent of the immigrants of 1912 reported that they were joining relatives here, and nearly 14 per cent more reported that they were going to friends, so that this most important agency for Americanization and aid in new and untried surroundings was open for all but 8 per cent of the immigrants in question. It is this important factor that accounts for the wonderful success of the immigrants, landing here almost wholly without funds and unfamiliar with our language, of whom a purely negligible quantity only became public charges. It is this factor, together with other agencies presently to be considered, which accounts for the remarkable fact that the United Hebrew Charities of New York, for instance, have only about half as many applications for assistance

today as they had about fifteen years ago, when the Jewish population and the Jewish immigration was much less than half as large! We are also entirely too prone to forget the lessons of the census, pointed out for us by Professor Walter F. Willcox for the Twelfth Census, and reapplied by him to the Thirteenth,³⁷ that the natural distribution of immigrants is much wider and more thorough than appears from their originally reported destinations. Nor should we forget that it is the illiterate immigrant, victim of inferior conditions in his own country, upon whom we depend to do work which the more literate laborer will not perform—working our farms, digging our subways, excavating our lots, and operating our mines.

For example, the 1,197,892 immigrant aliens who came over here in the fiscal year 1913 included 333,285 farmers and farm laborers (exclusive of their wives and minor children entered as having no occupation), whom we particularly need here, and who would be most likely to be debarred by an educational test. Professor Balch pointed out before the American Economic Association, in 1911, that “most Americans have an entirely false conception of the real significance of peasant illiteracy, which need not connote a lack of either energy or intelligence.” The census reports indicate that the literacy among native white children of foreign-born is appreciably higher than among native white children of native-born.³⁸

When we turn, however, to a study of the genesis and potency of the agencies provided for the assimilation of the immigrant, his Americanization and improvement, we notice that nearly all have been developed during the past few decades, and were unavailable to the old immigrant. Even educational facilities for the immigrant were formerly most elementary and inadequate, while we have today night schools with special immigrant classes, social settlements and educational alliances, industrial, trade and vocational schools, instruction in civics, improved foreign newspapers, and public lectures in foreign language. Labor unions and other associations promote high wages and high standards of living. These have gone up steadily, and not down. Tenement-house reform and increased railroad transit have improved housing conditions, particularly in our large cities, to a degree undreamed of in the days of the Gilder commission.

Federal and state bureaus of information for immigrants and resident

³⁷ *Quarterly Journal of Economics*, vol. 20, p. 523; and *Papers Twenty-fourth Meeting of the American Economic Association*, p. 66 et seq.

³⁸ *Abstract Thirteenth Census*, p. 239.

laborers, employment bureaus, immigrant aid societies, immigrant service of the Young Men's Christian Association and of other church organizations, and such organizations as the Italian Immigrant Bureau, the Industrial Removal Office, the Hebrew Agricultural and Industrial Aid Society, the Hebrew Sheltering and Immigrant Aid Society, the Baron de Hirsch Fund, and other similar organizations throughout the land, do effective work in Americanizing the immigrant, finding employment for him at good wages, overcoming tendencies towards congestion, effecting distribution, and promoting acquisition of American standards of living and thinking.³⁹ Of course, such agencies deserve and require unlimited extension and development; and in a number of our states, regulative legislation is badly needed, especially as applying to mining and labor camps.

In the light of these agencies the unbiased student cannot but conclude that the assimilative process today, even among the newer races in question, is far more potent than it was in the old immigration. Mr. Bryce, in the new addition of his *American Commonwealth* sums up the philosophy of this process:⁴⁰

The point in which the present case of race fusion most differs from all preceding cases, is in the immense assimilative potency of the environment. . . . The effigy and device, so to speak, which the American die impresses on every kind of metal placed beneath the stamp, is sharp and clear. The schools, the newspapers, the political institutions, the methods of business, the social usages, the general spirit in which things are done, all grasp and mould and remake a newcomer from the first day of his arrival, and turn out an American far more quickly and more completely than the like influences transform a stranger into a citizen in any other country. These things strengthen the assimilative force

³⁹ One must turn to innumerable scattered, individual reports to get an idea of the number and extent of these agencies and their achievements, for no historical and descriptive account of any individual branch even of these many activities has, to my knowledge, been thus far published. See particularly vol. 41 of *Reports of Immigration Commission*; "Distribution of Admitted Aliens and other Residents"; *Proceedings of the Conference of State Immigration, Land and Labor Officials with Representatives of the Division of Information Bureau of Immigration*, Nov. 1911; *Report of the Commission of Immigration of the State of New York*, 1909; *The First Century of the Republic* (Harper's, 1876); Robert's *The New Immigration*; Jane Addams, *Twenty Years of Hull House*; Griffin, *A List of Books on Immigration*; Carroll D. Wright, "Influence of Trade Unions on Immigrants," in *Bulletin of Bureau of Labor*, January, 1905, and chapter on this subject in Wiernik's *The Jews in America*, pp. 297-300; as also Hourwich, *Immigration and Labor*, pp. 325-52.

⁴⁰ Vol. II, p. 488.

of American civilization, because here the ties that held the stranger to the land of his birth are quickly broken and soon forgotten. His transformation is all the swifter and more thorough because it is a willing transformation.

William D. Howells has said:⁴¹ "I believe we have been the better, we have really been the more American, for each successive assimilation in the past, and I believe we shall be the better, the more American, for that which seems the next in order." Mr. Bryce also suggests ⁴² that nearly all "the instreaming races are equal in intelligence to the present inhabitants"; that a blending of races tends to stimulate intellectual fertility; and that the Jews, Poles, and Italians are likely to "carry the creative power of the country to a higher level of production" than it has yet reached. He also notes that

"today, most of the hard, rough toil of the country is everywhere done by recent inhabitants from central or southern Europe. The Irish and the urban part of the German population have risen in the scale, and no longer form the bottom stratum."

As to attempted comparative valuations of races, we should not forget Professor Royce's scathing analysis of the phenomenon in his *Race Questions and Provincialism and Other American Problems*. It is in initiating and developing salutary public and private agencies for distributing and Americanizing aliens, that a true solution of the immigration problem can be found.

⁴¹ *Harper's Weekly*, April 10, 1909, p. 28.

⁴² *Op. cit.*, vol. II, p. 482.

THE STRANGER AT OUR GATES*

The subject that has been assigned to me, under which to discuss your immigration activities, has been so phrased by your representative as properly to carry us back in thought to the "Book of Books", which enjoined provision for the needy alien, as evidenced, for example by the circumstance that our great law-giver himself named his own son "Gershom", in memory of the fact, according to Exodus, that "I have been a stranger in a strange land". I am glad to be able thus to stand on Jewish ground and that my own tentative phrasing was disregarded, which had read "They Who Knock at our Gates", suggested by the vehement and able plea, based upon American principles, for the "Open Door", recently published by that distinguished American Jewess, whose early autobiography, "The Promised Land", has deservedly become an object lesson of Americanization of the Immigrant. We can proudly invoke our Jewish precedents as incentives in all charitable work, for, as was recently said by the President of the Hebrew Union College in a paper on "Historical Development of Jewish Charity":

"I am far from claiming charity to be an exclusively Jewish virtue . . . I read the contrary view in my Bible, where not only the most exquisite sentiments regarding compassionate love for human kinship, whether slave or stranger, are put into the mouth of the Arabian shepherd prince Job (in Ch. XXXIV), but where a heathen woman, who followed the maternal impulse of her womanly soul, the Egyptian princess, is introduced as the guardian angel of Israel's greatest man, of Moses, the law-giver. And yet I speak without bias of charity as a specific Jewish imperative. It was the Jewish law that made charity a human obligation. It was the genius of the Jewish people that invested benevolence with the sense of duty, to render it a divine command". ("Hebrew Union College and Other Addresses", p. 230).

Aid for the immigrant, such as is provided by your society, may, in a rudimentary way, be said to have been administered by charitable societies in our country for upwards of a hundred and fifty years. German societies were, in fact, founded in Philadelphia, New York

* An Address before the Council of Jewish Women, New York City, December 19, 1916.

and Baltimore for that very purpose at that time already, long before we had any effective exclusion or governmental aid machinery, and these societies were non-sectarian and all comprehensive. It is probably unknown to you that over one hundred and twenty years ago the sufferings of a group of German Jews were alleviated in the debtor's prison in our city by their Christian brethren in the jail in which they had been cast, because unable to pay the passage money into this land of promise. The best and most effective laws of the day for relieving the hardships of the immigrants seeking to enter here, were framed at the instance of these German societies. It is, therefore, a wise step that the Governmental division in the Immigration Bureau is now taking, in seeking and offering co-operation in immigrant aid work to such organizations as your own, and we may say, without vanity, that the Government's Information Division itself was patterned, when provided for by Congress in 1907, upon the admirable work of our Jewish "Industrial Removal Office". The Trustees of Baron de Hirsch's munificent endowment never spent money with better results than in establishing such agency for distributing Jewish immigrants, in new districts, away from our congested cities, and thus opening new nuclei for Jewish settlement in the interior.

Moreover, the best constructive work for State aid for relieving and Americanizing the immigrant was mapped out by the New York State "Immigration Commission" of 1908, on which the gentleman who has just given us the city's greetings, Mr. Marcus M. Marks, worked so conscientiously under the chairmanship of Mr. Louis Marshall, and which included that noble-hearted Jewess, who has perhaps done more good and to a larger number of persons than any other inhabitant of our city, Lillian D. Wald. Nor is it an accident that one of your sex (though not of our creed), Frances Kellor, was also the first to translate this platform into action. So, also, our friend, Jacob H. Schiff, in organizing the so-called Galveston Bureau for diverting immigrants destined to America to sections west of the Mississippi before landing on our eastern frontier, gave this cause far more than the hundreds of thousands of dollars which he dedicated to this experiment, namely, his best thought and untiring attention. Nor should we overlook the splendid patriotic work for Americanizing the immigrants of all races and creeds which the Daughters of the American Revolution have been doing under the guidance of John Foster Carr.

I had occasion, recently, to jot down the entry which marks the beginning of our systematic exclusively immigrant-aid Jewish activities,

and it carries us as far back as 1869, long before the Russian Jewish stream began. In that year the Board of Delegates of American Israelites induced the Hebrew Benevolent Society of New York, to whose activities, long afterwards, the United Hebrew Charities and then the Jewish Immigration Committee succeeded, to make it "one of the regular duties of the Charity Committee of that Society to visit the Emigrant Depot and take charge of destitute Israelites needing help", and it is recorded "that the authorities have extended every facility".

Much credit is due to your former President, Miss Sadie American, for having realized, about 1904, that as far as Jewish unattended women immigrants, at least, were concerned, such work can be best performed by Jewish women, and that it should not stop "at the Gates", and accordingly, your valuable Ellis Island "follow-up" immigrant aid work, was called into existence. The Baron de Hirsch Fund, in my opinion, has never disbursed funds more wisely than in subsidizing such work as this, and its course, in so doing, was precisely in line with the purposes of the Fund. Related to it is the work that has now, thanks to the noble philanthropic spirit of Mrs. Oscar Straus and Mr. Lavanburg, been taken over by the Hannah Lavanburg Home. It is to be hoped that the plans of your national "Department of Immigrant Aid" for improving such immigrant aid work, by having each unattended Jewish woman, having no near relatives here, met at destination by interested friends, will be carried out, and that your "follow-up" work will thus be begun more promptly after arrival, when it is most needed.

It is difficult to overemphasize the value and importance of this Immigrant Aid work, particularly for the Jewess from the East, for whom our American life affords such a marked contrast, and the effects of the War make this protective work even more important than ever. Nor can I refrain from mentioning the admirable work the Chairman of your National Department of Immigrant Aid, Miss Helen Winkler, rendered, in connection with the investigation into the illiteracy of Jewish immigrants and its causes which we conducted three years ago, which showed that the Russian Jewess in particular was the victim of discrimination along educational lines in Russia, despite her eagerness to acquire an education. The report that resulted, published by the Government itself as a Senate document, has rendered valuable services in rational efforts to exempt such victims of religious persecution from cruel literacy tests.

But I would like to avail myself of this opportunity, not merely to praise your splendid work, but also to make a concrete recommendation for its enlargement in one important respect, if I may. A serious gap exists in our work of Americanizing the Immigrant, in that the "Mothers of Israel" among the immigrants are so greatly neglected. We rapidly Americanize the immigrant children, and particularly through those bulwarks of democracy, the public schools. The bread-winners, male and female, are largely Americanized by contact with our American environment in their daily work and in the night schools. But the "Mother in Israel", who particularly needs Americanization, because she especially has been deprived of educational opportunities abroad, and who is so often put greatly out of touch with husband and children, because deprived by circumstances here also of participation in the Americanizing process and this often before she arrives here, as her husband so often precedes her, in order to establish a home for her first, she is greatly neglected.

I read recently an able "call to duty" in this respect by Helen Varick Boswell, Chairman of Education of the General Federation of Women's Clubs in the March, 1916 issue of the "Annals of the American Academy of Political and Social Science", which I called to the sympathetic attention of some of your members. It seems to me that it is an excellent opportunity for improving our whole communal life that opens itself before this Section and your fellow-sections. Some steps in this direction have already been taken. I recall that more than twenty years ago, the Sisterhood of the Beth El Congregation which is today affording us its hospitality, started under my mother's direction "Mothers' Meetings", I think for the first time among Jewish women. Why not strengthen, co-operate and co-ordinate the work of the various Jewish Sisterhoods and related organizations in this field? Their various buildings throughout the city can doubtless be used on occasion for such purposes. All that is needed is your expert knowledge of the character and needs of the Jewish female immigrant, and the incentive and encouragement which you can afford! The Sisterhoods are already federated with respect to their "material aid to the needy" under the auspices of the United Hebrew Charities, and doubtless they would welcome such new league to strengthen existing organization in much-needed work on behalf of the "Mother in Israel"!

A EUROPEAN INVESTIGATION OF AMERICAN IMMIGRATION*

While America has sent numerous commissions and commissioners to Europe to study immigration conditions during the past few decades, the fact has almost wholly escaped attention that there was an official European mission to the United States for this purpose as early as 1817, which, in fact, resulted in an interesting and valuable report of considerable historical service on methods of transportation of the period and the condition of immigrants here, particularly German immigrants. It is probable that this mission was one of the important factors, leading to the passage of remedial laws in the United States in 1818 and 1819, and which also resulted in measures abroad for removal of many abuses, and that these American and European influences were of value in putting an end about 1819 to the "Redemptioner" system, with the evils of which this mission largely concerned itself. The mission was entrusted to Moritz von Fürstenwärther by his kinsman, Baron von Gagern, who had been prime-minister of the Netherlands and an influential delegate to the Congress of Vienna shortly before, and was a member of the Diet of the German Confederation, as representative of the Dutch state of Luxemburg, at the time that he gave the detailed instructions involved, to von Fürstenwärther, to study and report on American immigration conditions. Von Gagern caused this report, with a copy of his instructions and comments, to be printed under the title *Der Deutsche in Nord-Amerika* (Stuttgart und Tübingen, 1818, 124 pp.), but the booklet has become very rare, (though copies are to be found in the "Library of Congress," and in the "New York Public Library"). It was reviewed by Edward Everett in the "*North American Review*" in 1820 (Vol. 11, p. 1), in an article, the authorship of which was subsequently avowed. Von Gagern caused action upon it to be taken by the German "Bundestag" in 1819, and also secured remedial measures to be adopted by the Netherlands, and the prosecution there of persons guilty of some of the evils exposed. Von Fürstenwärther's work throws valuable light upon immigration to America just before the

* *Jahrbuch der Deutsch-Amerikanischen Historischen Gesellschaft von Illinois University of Chicago Press*, Vol. 17, 1917, under title "An Important European Investigation of American Immigration Conditions and John Quincy Adams' Relations Thereto (1817-18)."

fall of the Redemptioner system, and also upon the condition of immigrants here at a period when little systematic information was collected.

In Baron von Gagern's political autobiography, entitled "*Mein Antheil an der Politik*" (Vol. III *Der Bundestag*; Stuttgart and Tübingen 1830, pp. 151-3), he furnishes some information about Moritz von Fürstenwärther and his family, which is all the more useful, as the report gives very little such, not having been prepared with a view to publication. Von Fürstenwärther belonged to a Bavarian noble family, impoverished by the French Revolution, and his mother was a sister of von Gagern's mother. He studied at the University of Jena, served as a captain of grenadiers during the Napoleonic wars in Spain, and was planning to fight for the revolutionists in South America, when his kinsman and patron, von Gagern, gave him the commission to investigate American immigration, which von Gagern correctly says he did with good judgment. He settled in America and died early.

Von Gagern (Id. p. 145) calls attention to the important circumstance,—which is often overlooked in considering the heavy increase in immigration to the United States during several years antedating September 30, 1819, the beginning of our federal immigration statistics,—that a severe famine in 1816 and 1817 abroad, following closely upon the termination of the Napoleonic wars, greatly augmented this migration. It was then, accordingly, much greater than it had been during the European war period and our War of 1812, and decreased considerably (especially German immigration), when our federal statistics begin.¹

Von Gagern gives outlines of the conditions which induced inhabitants of Würtemberg, Swabia and the Palatinate in particular to emigrate at this period. We must not overlook, however, the radical change of attitude of German and other states toward emigration, effected by the treaty of Paris, which authorized departure of inhabitants within a period of six years from territory ceded by France at the end of the Napoleonic wars, and the provisions of the Treaty of Vienna in 1815, in constituting

¹ *Niles Register* of this period, (Vols. XI, 32, 127; XII, 365; XIII, 35, 79, 314; XIV, 336, 359, 365, 388, 400; XV, 9, 33; XVI, 298, 378; XVII, 63, 111; XVIII, 388), indicates that immigration to the United States during the first seventeen years of the Nineteenth Century averaged 10,000 per year and was about 30,000 during the years 1817, 1818 and 1819, and in one week in September, 1819 not less than 2,500 and perhaps as many as 3,000 arrived, and it amounted to about 20,000 aliens arriving at the Port of New York, besides about 16,000 returning Americans, between December, 1818 and December, 1819, confirming von Gagern's statements. S. C. Johnson's valuable *A History of Emigration from the United Kingdom to North America* (p. 344), gives us official figures for British emigration beginning 1815, and distinguished between those sailing for British North America and the United States, thus carrying statistics of immigration via

the German Confederation, which provided for free emigration from one German State into others. Until then, in general, with various exceptions, except in the cases of dissenters and Jews, emigration and inducing emigration from German states were forbidden under criminal penalty and the property of the immigrant was forfeited.² Of course, given a right to emigrate, the fatherland was no longer vitally interested in the question into which land its former subject was going. Von

England back several years earlier than our American official figures. According to Johnson, during the four years from 1816 to 1819 there sailed from Great Britain to the United States 42,405 emigrants and 51,837 more to British North America. Attention should, however, be directed to the fact that a very large fraction of the emigrants bound for Canada really were destined to the United States, British laws in force till 1824, as Johnson points out (p. 180), forbidding, under heavy penalties, inducing artificers in British manufactures to go into foreign parts; a statement confirmed by *Niles' Register*, which estimates the number destined to the United States approximately as half those sailing for Canada, most coming over via the St. Lawrence River (Vol. XIV, pp. 380-2; XVII, 111), though in *Niles* the exact reason for this course is not mentioned. Moreover, at this period, the fare from England to Canada was only about one-half that to the United States. Johnson also points out (pp. 101-3) that the British figures are incomplete because of the large number of surreptitious sailings at this period. Kapp's estimates for the first nineteen years of the Nineteenth Century (*Immigration and the Commissioners of Emigration of the State of New York*, p. 12) are thus shown to have been far too low. See also my papers "Some Aspects of the Immigration Problem" (*Am. Econ. Review*, Vol. IV, No. 1, March, 1914) reviewing some of these estimates and approving Prof. Ripley's adoption of George Bancroft's statement that already at the time of our Revolutionary War "One-fifth of the population could not speak English, and that one-half at least was not Anglo-Saxon by descent," and particularly the figures of our Census Bureau in *A Century of Population Growth*, as criticized by Prof. A. B. Faust in his *German Element in the U. S.* (I, 280-5) with the co-operation of Prof. Walter F. Willcox. On the other hand, Kapp (Id. p. 12) calls attention to the fact, significant today, that "the difficulty experienced in disposing of property at satisfactory prices, prevented many from leaving the Old World immediately after the close of the Napoleonic Wars," until the outbreak of this great famine. It should be noted that after 1819 immigration became so reduced that the Immigration Commission's Report (Vol. III, pp. 14-15) shows that during the year ending September 30, 1820, the total alien European immigration was only 7691, including only 968 from Germany, and these figures were larger than for the following few years. The circumstance is also commonly overlooked, set forth by Johnson (pp. 16, 356) that a British Commission in 1826 reported in favor of encouraging British and Irish emigration, because of an excess in the laboring population at home, following which immigration to America was promoted there both privately and officially.

² Much light on emigration conditions in the chief German States from early times on, is thrown by the valuable work, edited by E. von Phillipovich, entitled *Auswanderung und Auswanderungspolitik in Deutschland* (Schriften des Vereins für Socialpolitik, No. 52; 1892, p. 479). Of course, this author was unfamiliar with the enormous supply of manuscript material since rendered accessible by Prof. Learned's valuable *Guide to the Manuscript Material Relating to American History in German State Archives*. On the other hand, it is to be regretted that Prof. Learned does not cite von Phillipovich's work, supplementing so valuably the manuscript material by reference to German printed matter.

Gagern (*Mein Antheil*, etc. III, pp. 146-8) brought up the subject of emigration at the German Bundestag, in May, 1817 at the direction of his Government. This was to give notice of the edict promulgated by the Netherlands that, in view of the ever-increasing number of Swiss and Germans, arriving in the Netherlands en route to America, and the disturbances of the public peace resulting from their intermediate sojourn there without adequate means of sustenance, the Dutch Government would permit emigrants to America after June 15th to enter the Netherlands only en route to America, if residents of the Netherlands furnished adequate security for payment of the expenses accruing between such arrival and departure, notification of which von Gagern was requested to have made. The latter at this time also referred to the investigation of American immigration conditions, which he had had instituted and expected to submit to his sovereign. (*Protokolle der deutschen Bundesversammlung*, III, pp. 130-2) Again, on June 12th, 1817, he called the Diet's attention to the difficulties arising from the return of immigrants from America and the restrictions upon their re-entry into the countries from which they had migrated. The official protocol shows that there was a general discussion of the police regulations of the various states regarding emigrating and returning persons, and the conclusion was arrived at that the subject be called to the attention of the several States for action by them (*Id.*, pp. 201-3; *Mein Antheil*, pp. 148-159).

In his instructions to von Fürstenwärther, von Gagern mentions the fact that the Swiss Government had instructed its consul at Amsterdam to co-operate in this investigation, and von Fürstenwärther reports that this Swiss consul there, Planta, rendered him valuable assistance. Niles' Register, (Vol. 12, p. 365), shows that soon thereafter the Swiss Canton of Basle issued an order to refuse passports to America to any one not possessing 200 florins, doubtless figured as requisite to maintain him until arrival in America,¹ and von Fürstenwärther contrasts the kindness of the Swiss government to its emigrating subjects with that of various German states, and he might have pointed out that some of the German states were among the chief despoilers of their unfortunate emigrating subjects, levying exportation taxes of about 10 per cent. of all the emigrant's possessions upon them.

¹ Much light on these European regulations is thrown by Prof. Learned's work, as also by the valuable companion work by Prof. Faust on the Swiss and Austrian Archives. A number of other Cantons besides Basle issued such regulations at this time, and it is apparent that von Gagern and Swiss officials co-operated in this investigation.

After von Gagern had ceased to be a member of the German Diet, he caused a copy of von Fürstenwärther's printed report and of the letter from John Quincy Adams hereinafter referred to, to be submitted to the German Diet, in 1819. The documents were considered there (*Mein Antheil, etc.*, III., pp. 154-6; *Protokölle*, VIII., 148-150) at the instance of Bavaria's representative, Aretin, who summarized the report and pointed out that, even if emigration was not to be prohibited, it ought to be regulated, so as to mitigate its sufferings: "No Government could view, with equanimity, the impending misfortune of its former subjects, even if caused by their own recklessness. They were its children, even though erring children. Even countries whose subjects were not involved, were concerned, because, besides the dictates of humanity, the matter of national honor was involved." It was accordingly resolved that the printed report in question be accepted as containing valuable material for the amelioration of the condition of German immigrants to America, and that the editor and von Fürstenwärther be accorded the Diet's cordial thanks for their efforts. It was agreed that the subject matter be commended to the careful consideration of the various Governments, and that it be respectfully left to them to initiate appropriate methods for dealing with it, as private agencies cannot be expected to do so, and are unable completely to meet it. Von Phillipovich's and Prof. Learned's works indicate that from this time on, German supervision of emigration in fact became active and systematic. German emigration records date chiefly from this period. It is probable that the restrictions placed at this time by Holland upon this traffic underlie Prof. Thomas W. Page's statement, in one of his interesting series of papers on the history of immigration, which he has been contributing to the *Journal of Political Economy* (Vol. 19, p. 732, on *Transportation of Immigrants and Reception Arrangements in the Nineteenth Century*), that the rigor of her regulations substantially eliminated Dutch ports from this traffic, a statement certainly not true of the period before 1819.

Contemporary manuscript material obviously confirms von Gagern and von Fürstenwärther's statements that Holland's ports were at this period the chief ones for transit to America. Compare the following items from Prof. Learned's work (p. 49): "Papers relating to emigration in general and to the privilege of emigrating within six years (the 'sexennium' provided by the Peace of Paris) from all the provinces ceded by France, particularly Schuckmann's letter to the Ministry of Foreign Affairs, December 10, 1816 and the reply."

"Correspondence relating to the great emigration during the Sexennium; some 3,000 wishing to go from Trier alone. * * * Communication of Schultheis and Dr. Ebermaier to the Oberpräsident Graf von Solms, stating that emigration from Württemberg, Switzerland and bordering French departments, to Holland, has so increased in the last six weeks, that several thousand have passed down the Rhine and some 80,000 intend to go to America; Laubach, May 9, 1817."

"More correspondence relating to emigration, such as letters of June 6th and 22nd, 1817; and other papers relating to the inspection of passes, from which we learn incidentally that the emigrants from South Germany and Switzerland shipped almost exclusively down the Rhine."

Curiously enough, Prof. Learned seems to have found no trace of von Gagern and von Fürstenwärther's mission, and von Gagern's name does not appear in his "Guide" at all, while von Fürstenwärther is referred to only in connection with a recommendation for his appointment, about 1818, as diplomatic agent of the Hanse towns to the United States (p. 241). This is probably due to the fact that his "Guide" seems to include few, if any, papers of the German Confederation of this date (compare pp. 312, 133), while of course the Dutch Archives were left for treatment elsewhere. The letter from John Quincy Adams of June 4, 1819 to von Fürstenwärther, referred to hereinafter, is, however, unmistakably identifiable, despite its dating as "June 14th, 1819" in the "Guide" (p. 50), though the archives Prof. Learned examined contain merely an "extract" of this document, apparently not bearing the addressee's name. In his interesting Introduction (p. 8) Prof. Learned, however, refers to some subsequent measures of similar purpose: "So great became the interest in the New World, that it seemed impossible to check the emigration. The next question was, how to regulate the emigration of German subjects and to protect them against ill-treatment and fraud on the part of colonizing and shipping agents. In one notable instance, we find a German prince, Bernhard, duke of Saxe-Weimar-Eisenach, visiting the New World to see it with his own eyes, in the years 1825-6. Two years before, in 1823, we find documents relating to the organization of the 'American Co., of the Elbe'."

To return to von Fürstenwärther's reports, which were in the shape of letters which von Gagern printed without alteration—prefixing an introduction and a copy of his comprehensive instructions, bearing the Dutch official seal (pp. 3-10), to study German and Swiss emigration

to America, and methods to mitigate its hardships, with some concluding observations—Fürstenwärther left Frankfurt-on-the-Main on June 17th, 1817, en route to the United States, with letters of introduction to various persons in Europe and America. He wrote from Amsterdam on July 3rd, 1817 that the misery of most of the immigrants there was greater, and their condition more helpless and unprepared, than he had even imagined, and recommended regulation in Europe to ameliorate matters, if emigration was not to be wholly forbidden. He remarks that the Dutch cities were overwhelmed by masses emigrating to America, and called attention to the fact that delays in sailing resulted in consuming the means of those that had brought any money with them, and that they became the victims of fraud, disorder and lack of leadership, advice, assistance and supervision, while there was a shocking barter in human life whenever persons were without means. Inferior agencies engaged in this traffic, some of which he named, and the sudden flood of immigration caused the utilization of all sorts of vessels, that were unadapted for the traffic. For example, he mentions the fact that delay in the sailing of the ship *Neue Seelust* carrying several hundred Swiss to America, resulted in cutting down rations even before sailing, while waiting for more human freight. He calls attention to the interesting circumstance that subjects of Würtemberg had expressly to surrender their rights of citizenship before emigrating from their country, and pay an emigration tax, which the Swiss and Alsatians (pp. 11-13) did not have to do. A sample copy of the contracts of transportation employed, is copied by him, and it appears that the fare for adults, going to the United States, when paid in Amsterdam, was then 170 florins, children over 13 being treated as adults, and those under four were carried free, while those between 4 and 13 paid half rates. More was charged, when the fare was paid in America, and ten days' time to pay after landing was afforded. In case of death after half the voyage was over, the passenger's family was obliged to pay the passage-money, but if death occurred earlier, the loss fell on the vessel. On arrival in America, the redemptioners, i. e., persons to be redeemed from servitude by payment of the fare, were not to be permitted to leave the vessel without the captain's consent. The contract contained specifications of the food to be furnished each day, but breaches of the contract were often complained of before sailing even. A vessel was referred to, the *Seeflug*, bound to America, which had been waiting to sail for five weeks; 400 Würtembergers were aboard, and meantime 28 had died, including 25 infants (pp. 13-16). A number of other and even more shocking cases of heavy losses by death aboard ship are collated by him.

Von Fürstenwärther sailed for New York on the brig "Ohio", and his next letter was dated Philadelphia, October 28, 1817, and referred to the method pursued in disposing of the redemptioners. The captain advertised for prospective employers of the redemptioners, who were thereupon sold or leased for terms of years, upon payment by them of the passage money. Commonly, he observes, members of the German Society of Philadelphia come on board right after arrival. He mentions the fact that five vessels were then anchored off Philadelphia with 500 Redemptioners aboard, who had been waiting several weeks to be disposed of, and that on another vessel, out of 300 immigrants 70 had died before embarkation. It is noted that arrivals from Great Britain, especially England, had increased greatly during the past two years.¹

In a letter written in December, 1817, he refers to a consideration

¹ See Seidensticker's *Geschichte der Deutschen Gesellschaft von Pennsylvania* (1764-1876), Eickhoff's *In der Neuen Heimath*, the Supplement of which is a history of the German Society of New York, and the annual Reports of the Society for the History of Germans in Maryland, particularly No. 2, Hennighausen's *History of the German Society of Maryland* and Lohr's *Das Deutsch Amerikanertum vor 100 Jahren*, in Vol. 14 of the Yearbook of the German American Historical Society of Illinois, for contemporary statements from their records; also Kapp's *Geschichte der Deutschen im Staate New York*; Prof. Faust's work, *supra*; Deffenderffer's *German Immigration into Pennsylvania through the Port of Philadelphia*, Vol. II The Redemptioners; S. H. Cobb's *The Palatine or German Immigration to New York and Pennsylvania*, and *The Story of the Palatines*; Geiser's *Redemptioners and Indented Servants in the Colony and Commonwealth of Pennsylvania*; Ballagh's *White Servitude in the Colony of Virginia*; Byrd: *Slavery and Indentured Servants in Am. Hist. Review* I, 88; Kuhns' *German and Swiss Settlements of Colonial Pennsylvania*; Benjamin Rush's *Account of the Manners of the German Inhabitants of Pennsylvania* and Prof. Learned's works, to mention some of the most helpful studies of early German immigration to the United States. Mr. L. P. Hennighausen's paper on *The Redemptioners and the German Society of Maryland* in the above cited report of the Society for the History of Germans in Maryland, reproduces contemporary advertisements for the sale or hire of German redemptioners, as also an offer of a \$50 reward for an absconding redemptioner. It also reproduces an Act of Maryland of February 16, 1818, "relative to German and Swiss Redemptioners" and providing for their protection, and it is substantially correct to say that aid to the immigrants was then afforded almost exclusively by such German Immigrant Aid Societies, the German societies being more earnest and influential than the others at this period. The Pennsylvania German Society was the parent society, having been founded in 1764, the bulk of the German immigration being bound for Philadelphia at this period. It secured the enactment of a law to protect the immigrants in 1765 and another more stringent one in 1818. The Maryland Society secured enactment of a similar Maryland law, and the New York Society also from time to time secured suitable N. Y. legislation. There seems to be no doubt that von Fürstenwärther and the circumstance of his mission stimulated German activity after his arrival here in the direction of greater protection for the immigrants in the various cities specified, and as will be further noted presently, the Pennsylvania and Maryland laws of 1818 and the Federal Law of 1819 were agitated for largely at his instigation.

of immigration in an interview he had just had with John Quincy Adams, then Secretary of State. His narrative of this interview (pp. 28-9) is interesting, and there is no reason to doubt the substantial accuracy of his account thereof, despite Edward Everett's comments regarding it. In fact, the letter, hereinafter printed, written to von Fürstenwärther by Adams was composed after Adams had carefully read the printed work, and he does not in any way impugn its accuracy. Von Fürstenwärther says:

"I found him (Adams) extremely courteous and friendly toward myself. He listened to me at first with great attention, and later interrupted me frequently in my remarks. I gave him your pamphlet. On my second visit he asked me if I had any instructions; I deemed myself in duty bound to answer this truthfully, and declared that I was ready to exhibit them to him. What he answered was in substance as follows: 'The Government until now had been of the opinion that the European States, and particularly the German governments, did not like to see emigration going on, and for political reasons, in order not to disturb friendly relations, had not directly encouraged the same, or *had sought to avoid the appearance of seeming to encourage the same*. If, however, one were certain that the German princes would not place obstacles in the way of immigration, one might be more disposed to co-operate with them, but, he added, more on account of sympathy for the immigrants themselves. For, be it principle and conviction or national vanity, people have, or affect in general in America, a great indifference to foreign immigration, and seem to be of the opinion that the population of the United States would increase enough without the same.'

The Treaties of Paris and Vienna had been signed subsequent to John Quincy Adams' return to the United States from the Prussian mission at the beginning of Jefferson's administration, and he was probably not familiar with the change of attitude following those treaties.

Von Fürstenwärther reported that out of 4,000 persons who had arrived at Philadelphia on 17 vessels between July and December, 1817, 1,700 had been bound out for their passage money; of these, two-thirds remained in Pennsylvania, the remainder going chiefly to Ohio. Dutch ships were principally engaged in carrying immigrants to America at this time, though occasionally also American, Swedish, Russian and English vessels; they were inferior ships, the American being the best. Under a Pennsylvania local law, the captains were obliged to provide for the

passengers aboard ship and there were other protecting provisions. The term of service varied between two and four years, depending on the circumstances, and children of tender years went free with the parent. The Pennsylvania protective law was good, but is not fully observed, particularly not by foreign vessels. Philadelphia, New York and Baltimore are the chief ports for the traffic. He mentioned the interesting fact, the significance of which has been overlooked, that the New York statute requiring vessels to give bond for each immigrant brought over, against his becoming a public charge (Rev. Stat. of N. Y. of 1813, Vol. II, p. 440), led to the preference of Philadelphia over New York by shipowners, while on the other hand, immigrants going to New York were of a better class. Von Fürstenwärther advised emigrants against going to Baltimore, which had no protective laws, and where familiarity with negro slavery begot worse treatment of the redemptioners, who in the South were described as "Dutch or White Slaves." He made some interesting observations about the Redemptioner system, which, he points out, had many of the aspects and evils of slavery, while, on the other hand, it had the advantage of compelling the immigrants, during their servitude, to learn the language, customs, trades and pursuits of the locality, and to acquire local information, and they were then ready to become independent and succeed. The treatment of the redemptioners in Pennsylvania and the Western states, where there was no negro slavery, was good. Young people between 14 and 20 years old were in most demand. The history of German immigration to Pennsylvania is outlined by him, and he reports that it had increased since the American Revolution, and particularly since the European wars, and that half of the population of Pennsylvania is German or of German descent. He praises the then pending effort at colonization in the Illinois territory by the Irish society, which had in vain petitioned Congress for sale of lands on credit, and reviews various German, Swiss and French colonies in America, recently formed, and discusses the opportunities to secure land free or at low prices, and the land-office and its branches.

It is interesting to note the statement that the United States had reached a point in their national development when they were independent of immigration, and that the population doubled itself every twenty years. National vanity gave rise to the general assertion that the United States could dispense with immigration, he says; nevertheless, the immigrants were always welcome, a lack of labor continues, and the country would sorely feel the consequence, if immigration were suddenly to cease. The abject condition of the German immigrants im-

paired their opportunities, especially as regards those coming over in winter, and there was a general complaint regarding the looser moral standards of the immigrants of the last twenty to thirty years, which, he thought, might possibly be ascribed to the unhappy time of revolt and warfare, and the general deterioration in European morals.² He reports that the Germans in America are in general personally esteemed, regardless of nationality or descent; and many are rich or well-to-do, and have distinguished themselves by their service to their fellow-citizens. Schneider (Snyder?), the last Governor of Pennsylvania, was of German descent, and offices and posts of distinction are open to them. In general, the German resident is esteemed because of his industry, frugality, domesticity, honesty and his quiet disposition, and particularly as an agriculturalist. Pennsylvania, he says, owes to him, her universally recognized pre-eminence over other States in the matter of an established agricultural system.³ "Germans are preferred over the Irish and the French immigrants; with the last-named, the Americans cannot become friendly, and they are not liked personally, though people sympathize with the fate and the principles of that nation."

² The general disposition to locate the golden age behind us, is to be noted at a time just preceding this "twenty-to-thirty-year period," too. In the report of Phineas Bond, British Consul at Philadelphia to his Foreign Office, he said in 1789 (*Am. Hist. Ass'n Repts.* 1896 I, p. 643): "An almost total stop has been lately put to migration hither from the Palatinate and other parts of Germany, so that the few who now come hither from that country get into Holland by stealth and embark at Amsterdam and Rotterdam, and these are a very ordinary sort of people." In fact, German prohibitions and restrictions on emigration had existed in many sections for a long time. In his very interesting and useful article on "Auswanderung" with its valuable bibliography, v. Philippovich, writing in the *Handwörterbuch der Staatswissenschaft*, edited by Conrad, Elster, Lexis and Loening (3rd Ed. 1909, 11, p. 263) enumerates restrictions upon German emigration, first by Hanover in 1753, then by Brunswick, Mecklenberg-Schwerin and the free cities, and Emperor Joseph II's complete prohibition of 1768, all of which were futile in view of the irresistible desire thus to escape oppression, even under a system of temporary servitude, which is said to have furnished America with half its population in colonial times. (See also fuller treatment in von Philippovich's above cited book, Moenckmeier's *Die deutsche überseeische Auswanderung* (1912) and Prof. Faust's article and note on Swiss emigration in the October, 1916, issue of the *American Historical Review*, besides his and Prof. Learned's "Guides").

³ Compare Benjamin Rush's contemporary tribute to the value of the Germans, particularly as agriculturists, written in 1789, and quoted with other works in my above-cited paper in the *Am. Economic Review*, Vol. IV. Prof. McMaster in his *History of the U. S.* (Vol. IV, p. 393) contrasts the German immigrant of this period to his advantage, with the Irish, and he calls (pp. 391-2) attention to the curious agitation which grew out of the action of the Postmaster General of the United States at this period, in calling upon all postmasters to report as to the state or country of their birth, and that of their clerks, which was described by many as an insult to the foreign-born and a fire-brand of discrimination and discord. In Canandaigua, the newspaper refused to print the regulation, and the postmaster to obey it, and others followed suit, particularly in the West.

Von Fürstenwärther observes, that the German nation and name were not esteemed; that the United States, though a new people, by reason of national vanity, surpassing that of Europe, "look with contempt upon those from whom emanate the first germs of her culture, and that there is particularly lack of regard for German, perhaps because of German lack of unity. The people of the United States are accustomed to judge by the culture, character and appearance of the individuals they see on their shores, the masses of whom are not calculated to create a more favorable opinion. The number of cultured Germans who visited or settled here has always been small, and the inferior condition of the immigrants of the last few years, aggravates this." He goes on to say that twenty or thirty years previously, the American or Englishman travelling in Pennsylvania, not conversant with German, had serious difficulties in making himself understood, but this had since greatly decreased, despite the increasing immigration, and during the past ten years the German language had declined in America, and there was a strong tendency toward English. The Germans residing in the U. S., themselves no longer preferred German, and even the German Society wanted to conduct its proceedings in English, though Pennsylvania still maintained nineteen German newspapers and there were two more in Ohio and Maryland, respectively. He comments on the general religious tolerance prevailing. He notes that attachment to Germany on the part of her former subjects is disappearing, and they become zealous democrats and peaceful citizens of the United States. He concludes that good opportunities still exist for the German immigrant, though not as favorable as before. On the other hand, he dilates upon the troubles and dangers of the trip and its many difficulties and set-backs, and particularly those arising from unfamiliarity with the land and the language, making success for the immigrants very doubtful, especially at that time, and as long as the draw-backs were not removed or mitigated. He points out, moreover, that America's advantages are generally exaggerated in Germany. He concludes, however, that there is still room and opportunity for millions of immigrants in the United States, especially for agriculturalists and handicraftsmen. He argues, that culture is missing in the U. S., and not dreamt of; instead of aesthetic sense and ennobling elements, he encountered crass materialism and sordidness, and complains that Americans did not know the spiritual freedom (*Seelenfreiheit*) of Europe, especially of Germany. As to these comments, more anon, in connection with criticisms of his views by Edward Everett and John Quincy Adams.

As already remarked, von Fürstenwärther stimulated and contributed towards the enactment of Pennsylvania and Maryland local statutes for the protection of immigrants, and also towards the passage of the federal act of March 2, 1819, the first federal law regulating passenger transportation. The latter deserves more particular attention here, and he refers to its pendency very early in the day. This law is generally regarded as having ended the redemptioner system, by reason of its limitation upon the number of passengers that might be carried on ocean-bound vessels, and its provisions for victualing and reporting, making the business as hitherto conducted, unprofitable. Seidensticker in his "*Geschichte der Deutschen Gesellschaft von Pennsylvania*" (p. 111), called attention to the fact that that Society on January 12th, 1818, appealed to Congressman Sergeant of Philadelphia to bring about appropriate federal legislation, and that Congressman McLane of Delaware introduced the bill which was enacted, as amended, on March 10, 1818. Von Fürstenwärther's prior interview, about Dec. 1817, with John Quincy Adams has already been referred to, and it should be remembered that the latter had had occasion to familiarize himself with the earlier English Act of 1803, upon which the American statute was based, and to discuss its operation with the British Foreign Office in 1816 and 1817 (J. Q. Adams' *Memoirs* III, 305-7, 476-7; Johnson, *supra*, pp. 101-3). Moreover, William Wirt, the Attorney General of this administration, was a son of a Swiss immigrant, and a German mother. He resided in Baltimore, and subsequently started a colony for German immigrants in Florida, as Kennedy's biography of him points out. *Niles' Register*, (Vol. 13, p. 373) reports that on January 20, 1818, on motion of Mr. Forsyth, the House Committee on Commerce and Manufactures was instructed to investigate the subject of limiting the number of passengers to be brought into the United States by American and foreign vessels, according to the tonnage of the vessels. On March 10, 1818 Mr. McLane, of this Committee, reported a bill on the subject (*Annals of Congress*, Vol. 31, p. 1222), which, as amended, became a law in 1819. The only debate regarding it that has been preserved in the "*Annals of Congress*" is the statement concerning it made by Mr. Newton in the House of Representatives on December 16, 1818, (*Id.* Vol. 33, pp. 4141-5) as follows:

"The bill to regulate passenger ships and vessels came next in order.

"Mr. Newton explained the necessity of this bill and the nature of its provisions. The great object of it was, he said, to give to

those who go and come in passenger vessels, a security of sufficient food and convenience. In consequence of the anxiety to emigrate from Europe to this country, the captains, sure of freight, were careless of taking the necessary quantity of provisions, or of restricting the number of passengers to the convenience which their ships afforded. To show how necessary such a bill as this had become, one or two facts would suffice. In the year 1817, five thousand persons had sailed for this country from Antwerp, etc., of whom one thousand died on the passage. In one instance a captain had sailed from a port on that coast with one thousand two hundred and sixty-seven passengers. On his voyage he put into the Texel, previous to doing which four hundred had died. After being on the passage to our shores, before the vessel arrived at Philadelphia, three hundred more had died. The remainder, when the vessel reached Newcastle, were in a very emaciated state from the want of water and food, from which many of them afterwards died. Many other cases might be stated, but these would suffice to show the absolute necessity of provision, such as those of this bill. The bill restricted the number of passengers to two for every five tons' burden of the vessel. In Great Britain, formerly, but one had been allowed to every five tons; but now, one to every three tons. The committee had been of opinion that the scale of one to every two tons and a half would afford every necessary accommodation. With regard to the other sections of the bill, they were generally similar to those of the act respecting seamen, by which a captain is obliged to take on board a certain quantity of water and bread for each seaman employed.

"No objection being made to the bill, it was ordered to be engrossed for a third reading."

But this federal law seems to have been frequently evaded, and doubts were then entertained as to its validity as applicable to foreign vessels, so that the regulative measures abroad, above referred to, growing out of von Fürstenwärther's mission, were of great importance, and doubtless largely account for the heavy decline in immigration for some years after the federal law was enacted.

It is apparent that von Fürstenwärther was by no means free from a "certain condescension" toward foreigners, which Lowell satirized at a later period, and that sarcastic comments regarding his utterances by Edward Everett in the review of his work, were not unjustified. Everett, however, in turn yielded to the temptation himself, and some of his

criticisms were scarcely just. Everett refers to the exculpatory statement made by von Fürstenwärther himself in the second number of the Philadelphia *Amerikanische Ansichten*, that his letters were not intended for publication, and to the criticism of a New York paper, entitled *Deutscher Freund*, regarding our author's aristocratic point of view. Edward Everett, just returned from a trip to Europe, which included a stay in Germany, particularly castigates our author for his comment about the supposed lack of aesthetic sense and of the "higher freedom of the soul" in America, alleged to be present in Germany, and well says (p. 19):

"We apprehend that it is precisely those fine moral comforts which are wanting 'in Europe, nay, we say it boldly, in Germany most of all.' In some parts of Europe there is more wealth, in most there is more artificial refinement and more learning than in America; but in none is there much freedom, either of soul or body; most in England, but not enough there. The tyranny is of a different kind in different places. In one it is the disproportionate wealth of the aristocracy, as in England, and in one it is the unbalanced despotism of the government, as in Germany, but in all it is freedom, liberty, confidence, equality of rights, where there is equality of merit, which are wanted; a want which is poorly supplied by pictures and statues, by fleets and armies, nay, by fine poetry and prose; though these are excellent in their way."

Soon after his book was published, von Fürstenwärther sent a copy to John Quincy Adams, with an appropriate letter of transmittal, and he appears to have inquired about the possibility of securing a federal appointment in the United States. Adams, in reply, addressed to him a very interesting letter regarding immigration to the United States (dealing of course with the immigrants antedating the revolution of 1848) which was printed repeatedly in contemporary newspapers thereafter, both here and abroad, and a long extract from it was added by von Gagern as an appendix to his work *Mein Antheil an der Politik*; (III, pp. 251-6). It is unfortunately omitted from Mr. Worthington C. Ford's edition of John Quincy Adams' correspondence. Several early works on America in German, published both here and abroad, repeated the letter in part, and with unqualified approval of its contents. As garbled reports of the letter were being published, its exact text was printed in Niles' Register, Vol. 18, p. 157, on April 29th, 1820, and it is reprinted here from that periodical, with the explanatory note from that paper prefaced to it.

In the phrase "The United States has never adopted any measure to encourage or invite emigration from any part of Europe," in the letter from Adams to von Fürstenwärther, we can recognize the hand of the citizen of New England, which section has never been as much inclined to welcome immigrants, as other portions of our country, as also that of the Secretary of State, cautious to avoid embroiling us with countries of Europe, by taking a course that might interfere with their own laws against emigration, which Adams had verbally discussed with von Fürstenwärther. It is, however, doubtful, if this statement was correct when written, and it certainly became incorrect before long. Even previously, Jefferson had been elected President on a platform which set forth the since repeatedly-reiterated American doctrine of right of asylum for the persecuted, and opposition to the Alien and Sedition Laws, and in his Presidential Message of 1801 he had employed the classical phrases: "Shall we refuse the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our forefathers arriving in this land? Shall oppressed humanity find no asylum on this globe?" Still earlier, in the Declaration of Independence, one of our grievances against England there formulated, was her refusal to pass laws to encourage the immigration of foreigners, and in August, 1776, Congress had adopted a comprehensive report in favor of encouraging immigration. Subsequent to this letter, John Quincy Adams, in his *Memoirs* (VI, 224) himself records a conversation which he had with Henry Clay on December 2, 1823, in the course of which Clay said:

"He (Clay) said he had thought of offering a resolution to declare this country an asylum for all fugitives from oppression, and to connect with it a proposal for modifying the naturalization law, to make it more easily attainable. The foreigners in New York are petitioning Congress to that effect, and Clay will turn his liberality towards them to account."

This was before Congress enacted the act of July 27, 1868, which became Sec. 1999 of our Revised Statutes, declaring that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness * * * in the recognition of (which) principle this Government has freely received emigration from all nations and invested them with the rights of citizenship," and which recites that declarations inconsistent therewith are "inconsistent with the fundamental principles of the Republic." (See an account of the history leading up to this declaration, in Prof. John B. Moore's essay "The Doctrine of Expatriation" in

his *American Diplomacy*, pp. 168-199, especially pp. 181-8, and McMaster's *With the Fathers*, pp. 87-106). Prof. Thomas W. Page even points out, in writing on "Causes of European Immigration to the United States" (*Journal of Political Economy*, Vol. 19, pp. 676-93), that our ministers abroad have been repeatedly instructed to endeavor to secure the removal of obstacles presented by foreign legislation, to immigration to our shores, and this was particularly noticeable in connection with the treaties with German states, negotiated by Henry Wheaton, by which German states repealed their taxes on emigrants, the so-called *droit d'Aubaine* and *droit de detraction*, in exchange for concessions which we made to them, (*Moore's International Law Digest*, 158; Lawrence's sketch of Wheaton in the 6th Edition of *Wheaton's Elements of International Law*, pp. 110-112, and the works by Prof. Learned and von Phillipovich above cited.) One-time Congressional efforts to encourage immigration are also considered by Prof. Page, and in the History of *Immigration Investigation and Legislation* prefixed to the U. S. Senate Report on Immigration of February 22, 1893 (Senate Report No. 133 of the 52d Cong. 2nd Session, pp. 9-17) and Vol. 39 of the reports of the Immigration Commission, entitled "Immigration Legislation." See also utterances of English authorities on the same subject in Parliament, collated in a paper by the present writer on "The Immigration Problem and the Right of Asylum for the Persecuted," reprinted in "Hearings before the House of Representatives' Committee on Immigration and Naturalization, 63rd Cong., 2nd Session, December 11th and 12th, 1913, pp. 199-210, and compare my paper "*The Right of Asylum with Particular Reference to the Alien*" in the *Am. Law Review*, May-June, 1917.

LETTER FROM JOHN QUINCY ADAMS

TO MORITZ VON FUERSTENWAERTHER

(From *Niles Register*, April 29, 1820.)

(The letter, of which the following is a copy, appears to have been published in a German translation at Augsburg; whence, by a re-translation, it has appeared in some of the English gazettes, and from them been extracted into some of the newspapers in this country. In its double transformation it has suffered variations not supposed to be intentional, nor perhaps important, but which render the publication of it proper, as it was written. It has been incorrectly stated to be an answer in the name of the American

government. It was indeed written by the Secretary of State, as it purports, in answer to an application from an individual and respectable foreigner, who had previously been employed by the Baron de Gagern, to collect information concerning the German emigrants to the United States, and to endeavor to obtain encouragements and favors to them from his government. Upon that mission he had been particularly recommended to Mr. Adams, to whom a printed copy of his report to the Baron de Gagern had afterwards been transmitted. There are several allusions to the report, in this letter, which was an answer to one from Mr. Fürstenwärther, intimating a disposition to become himself an American citizen; but suggesting that he had offers of advantageous employment in his native country, and enquiring whether, in the event of his settling here, he could expect any official situation in the department of state, or any other under the government.)

“Department of State,
Washington, 4th June, 1819.

SIR:—I had the honor of receiving your letter of the 22nd April, enclosing one from your kinsman, the Baron de Gagern, and a copy of your printed report, which I hope and have no doubt will be useful to those of your countrymen in Germany, who may have entertained erroneous ideas, with regard to the results of emigration from Europe to this country.

It was explicitly stated to you, and your report has taken just notice of the statement, that the government of the United States has never adopted any measure to *encourage* or *invite* emigrants from any part of Europe. It has never held out any incitements to induce the subjects of any other sovereign to abandon their own country, to become inhabitants of this. From motives of humanity it has occasionally furnished facilities to emigrants who, having arrived here with views of forming settlements, have specially needed such assistance to carry them into effect. Neither the general government of the union, nor those of the individual states, are ignorant or unobservant of the additional strength and wealth, which accrues to the nation, by the accession of a mass of healthy, industrious, and frugal laborers, nor are they in any manner insensible to the great benefits which this country has derived, and continues to derive, from the influx of such adoptive children from Germany. But there is one principle which pervades all the institu-

tions of this country, and which must always operate as an obstacle to the granting of favors to new comers. This is a land, not of *privileges*, but of *equal rights*. Privileges are granted by European sovereigns to particular classes of individuals, for purposes of general policy; but the general impression here is that *privileges* granted to one denomination of people, can very seldom be discriminated from erosions of the rights of others. Emigrants from Germany, therefore, or from elsewhere, coming here, are not to expect favors from the governments. They are to expect, if they choose to become citizens, equal rights with those of the natives of the country. They are to expect, if affluent, to possess the means of making their property productive, with moderation, and with safety;—if indigent, but industrious, honest and frugal, the means of obtaining easy and comfortable subsistence for themselves and their families. They come to a life of independence, but to a life of labor—and, if they cannot accommodate themselves to the character, moral, political, and physical, of this country, with all its compensating balances of good and evil, the Atlantic is always open to them, to return to the land of their nativity and their fathers. To one thing they must make up their minds, or, they will be disappointed in every expectation of happiness as Americans. They must cast off the European skin, never to resume it. They must look forward to their posterity, rather than backward to their ancestors;—they must be sure that whatever their own feelings may be, those of their children will cling to the prejudices of this country, and will partake of that proud spirit, not unmingled with disdain, which you have observed is remarkable in the general character of this people, and as perhaps belonging peculiarly to those of German descent, born in this country. That feeling of superiority over other nations which you have noticed, and which has been so offensive to other strangers, who have visited these shores, arises from the consciousness of every individual that, as a member of society, no man in the country is above him; and, exulting in this sentiment, he looks down upon those nations where the mass of the people feel themselves the inferiors of privileged classes, and where men are high or low, according to the accidents of their birth. But hence it is that no government in the world possesses so few means of bestowing favors, as the government of the United States. The governments are the servants of the people, and are so considered by the people, who place and displace them at their pleasure. They are chosen to

manage for short periods the common concerns, and when they cease to give satisfaction, they cease to be employed. If the powers, however, of the government to do good are restricted, those of doing harm are still more limited. The dependence, in affairs of government, is the reverse of the practice in Europe, instead of the people depending upon their rulers, the rulers, as such, are always dependent upon the good will of the people.

We understand perfectly, that of the multitude of foreigners who yearly flock to our shores, to take up here their abode, none come from affection or regard to a land to which they are total strangers, and with the very language of which, those of them who are Germans are generally unacquainted. We know that they come with views, not to our benefit, but to their own—not to promote our welfare, but to better their own condition. We expect therefore very few, if any transplanted countrymen from classes of people who enjoy happiness, ease, or even comfort, in their native climes. The happy and contented remain at home, and it requires an impulse, at least as keen as that of urgent want, to drive a man from the soil of his nativity and the land of his father's sepulchres. Of the very few emigrants of more fortunate classes, who ever make the attempt of settling in this country, a principal proportion sicken at the strangeness of our manners, and after a residence, more or less protracted, return to the countries whence they came. There are, doubtless, exceptions, and among the most opulent and the most distinguished of our citizens, we are happy to number individuals who might have enjoyed or acquired wealth and consideration, without resorting to a new country and another hemisphere. We should take great satisfaction in finding you included in this number, if it should suit your own inclinations, and the prospects of your future life, upon your calculations of your own interests. I regret that it is not in my power to add the inducement which you might perceive in the situation of an officer under the government. All the places in the department to which I belong, allowed by the laws, are filled, nor is there a prospect of an early vacancy in any of them. Whenever such vacancies occur, the applications from natives of the country to fill them, are far more numerous than the offices, and the recommendations in behalf of the candidates so strong and so earnest, that it would seldom be possible, if it would ever be just, to give a preference over them to foreigners. Although, therefore, it would give me a sincere pleasure to consider

you as one of our future and permanent fellow citizens, I should not do either an act of kindness or of justice to you, in dissuading you from the offers of employment and of honorable services, to which you are called in your native country. With the sincerest wish that you may find them equal and superior to every expectation of advantage that you have formed, or can indulge, in looking to them,

I have the honor to be, sir, your very obedient and humble servant,

JOHN QUINCY ADAMS."

THE ATTITUDE OF THE FATHERS OF THE REPUBLIC*

The publishers announce in connection with this booklet that: "into this little volume the editors have gathered all that the early leaders of the nation said that pertains to the question of immigration policy. Washington, Adams, Jefferson—almost every one, in fact, among the founders of the nation, seems to have expressed himself clearly and distinctly upon this subject, which is so vastly important to the country. These sayings are surprisingly pertinent to the controversy and will illuminate it." It would have been franker on the part of our editors, had they indicated their connection with the Immigration Restriction League on the title page, for in that event, the reader might have been prepared beforehand for the extraordinary "garbling" which this work represents. The title page says, in small type: "Research work by Ogden A. Kelley", which perhaps is a suggestion that he, rather than the "editors", should be held responsible for everything except the "Foreword", which the editors themselves have signed. When lawyers prepare briefs, they do so avowedly as retained champions of one of the litigants, but even in his brief, a conscientious lawyer will indicate that the views he quotes in support of his cause were not always those of the authority he cites, when that is the case. The degree of suppression of truth underlying a work which contains fourteen passages from Thomas Jefferson, the leader in liberal immigration legislation, for instance, and omits all his really famous and basic utterances to the contrary, is colossal. So also as to all the other "fathers of the Republic" quoted, all of whom figure here as ardent restrictionists.

In the judicious and fair summary of our attitude towards immigration, contained in the well-known "History of Immigration Investigation and Legislation", prepared by the U. S. Senate Committee on Immigration in its report of Feb. 22, 1893, it is well said: "From the foundation of the government until about the time of the passage of the national statute of 1882, the prevalent sentiment seemed to be the encouragement of immigration." Needless to say, a much larger volume could be prepared of really characteristic utterances by the fathers, in favor of the encouragement of immigration, which this volume suppressed. Even as it is, this volume is prepared so recklessly

* "The Founders of the Republic on Immigration, Naturalization and Aliens." Collected and Edited by Madison Grant and Charles Stewart Davidson. New York. Charles Scribner's Sons, 1928. \$1.00.

that John Adams' letters of 1780 and 1800 against employing foreigners "as U. S. consuls abroad", (pages 1 and 9) are twice summarized in the "Table of Contents" (p. IX) as "against employing foreigners" and "favoring employing Americans"! Similarly, we are twice informed by the editors, that Jefferson was elected president in 1800 "by the foreign vote", (pp. 11, 37) whatever that was.

To enumerate some of the striking instances in our early history in which the real sentiment of the fathers on the question was expressed which our authors have ignored: We read in the "Declaration of Independence" itself, drafted by Jefferson in conjunction with Franklin and John Adams, that one of the grievances of the colonists was that the King "has endeavored to prevent the population of these States, for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither." A few months later, in August, 1776, Congress adopted a comprehensive report in favor of the encouragement of immigration. In the Constitutional Convention of 1787, James Madison uttered the famous words, (which our authors suppress, in favor of some later haphazard remarks, in personal letters, less liberal): "He wished to invite foreigners of merit and republican principles among us. America was indebted to emigration for her settlement and prosperity. That part of America which had encouraged them most had advanced most rapidly in population, agriculture and the arts" (Elliott's Debates V 411). On the same occasion, James Wilson, one of the ablest members of the convention and subsequently Justice of the Supreme Court, "cited Pennsylvania as proof of the advantages of encouraging immigration. It was perhaps the youngest (except Georgia) settled on the Atlantic, yet it was at least among the foremost in population and prosperity. He remarked that almost all the general officers of the Pennsylvania line of the late army were foreigners. And no complaint has ever been made against their fidelity or merit. Three of her deputies to the convention (Robert Morris, Mr. Fitzsimmons and himself) were not natives". He might have said the same of the West Indian, Alexander Hamilton, whose antagonism to Jefferson put him in the anti-alien column, almost the only one of all included in this volume, as John Adams' attitude was so largely defensive, in view of the pro-French outbursts, leading to the enactment of the Alien and Sedition Acts of 1798. On the other hand, John Marshall risked his entire political future by giving his casting vote for their repeal, and even Hamilton opposed their enactment. It is, of course, well known that

Jefferson was elected president on the issue of sympathy for the aliens, and his famous battle-cry of 1800 of "right of asylum" to the persecuted alien, was re-echoed in his famous Presidential Message of 1801 (Richardson's Messages 1, 327). What is, however, commonly overlooked is the fact that Washington had even previously coined this phrase in an able state paper, for we read in his Thanksgiving Day proclamation of January 1st, 1795 a prayer "to render this country more and more a safe and propitious asylum for the unfortunate of other countries" (Id. p. 180). But have our authors no literary reputation to maintain, to put forth such a misleading work as the volume under consideration?

PART II

ALIENS IN THE
UNITED STATES

LEGAL DISABILITIES OF ALIENS IN THE UNITED STATES*

Strangely enough, we have no recent books in English dealing with the general subject of the legal disabilities of aliens. The best treatment we have is to be found in "Corpus Juris," article "Aliens" in Vol. II (1915), with numerous cross-references to other volumes, and the supplements. Perhaps the most convenient work for the general reader is Borchard's "Diplomatic Protection of Citizens Abroad" (1916), though the matter of legal rights and disabilities of aliens in the United States (pp. 33-115) is only incidental to the main topic of this book. Prof. Borchard's treatment of the subject is more recent and comprehensive than that to be found in Judge John Bassett Moore's "International Law Digest" (1906) Vol. IV, pp. 1-238, which monumental work still contains the most authoritative treatment of the subject, and for a long time was our only useful work on the theme. Particularly interesting and valuable is A. C. Bernheim's "History of the Law of Aliens from the Standpoint of Comparative Jurisprudence," but it is little known, having been published merely as a Columbia College Ph.D. thesis in 1885, and besides being quite old, its treatment of the section dealing with the United States fills only about 50 pages¹. Of course, such specialized subjects as the law governing "Exclusion and Expulsion of Aliens" have received much more detailed separate treatment by Bouve, Kansas, McKenzie, Mary R. Coolidge, Cook and Haggerty, Jane P. Clark, William C. Van Vleck, etc.

Roughly speaking, and with some important exceptions, one may say that the resident alien enjoys all the rights of American citizens in our country, other than political rights (such as voting and holding public office), and other than the legal limitations placed upon his right to enter the country and remain here. He is a "person" within the 14th Amendment and most other protective provisions of the Constitution of the United States, as long as the Government's right to exclude or expel him is not in question, and he is the subject matter of numerous

* From the *American Bar Association Journal* of February, 1930, as somewhat enlarged.

¹ To these should be added S. J. MacClintock's "Aliens under the Laws of the United States" (1909) and Norman Alexander's "Rights of Aliens under the Federal Constitution" (1931).

grants of rights and privileges contained in treaties entered into by the United States, which override inconsistent State legislation.

Our American jurisprudence by its example has done much to safeguard the rights of aliens all over the world, it being of course elementary that the concept of constitutional restraints, invalidating inconsistent legislation, was first evolved in our country, as also that of self-executing treaties, repealing inconsistent statutes, state or federal.

The chief exceptions to the assimilation of the civil rights of aliens to those of citizens in the United States, relate to exclusion and expulsion, ownership and control of real estate (when not covered by special treaties), right to employment in public works, right to enjoy equally with citizens public property, like public lands, hunting and fishing, and right to engage in occupations in which promissory oaths or official licenses are exacted.

Our generous treatment of aliens is, of course, in singular contrast to the early jurisprudence of other countries. In early history, the alien had no rights, but was regarded as an enemy practically devoid of rights. It has been pointed out that the term "ellento" (foreigner) in Roman law was carried into the German language, to describe as "elend" the "miserable" condition of the foreigner. In the struggle for acquiring individual rights, the subjects of practically every country fought for rights for themselves alone, and not for the resident or non-resident foreigner. Moreover, every country was engaged in almost incessant warfare with almost every other, so that the denial of rights of "alien enemies" was the prevailing condition. Of course, even in our own day, we have noticed how war cut down the rights of "alien enemies," and such reduction of rights was much more sweeping in primitive times. This condition came to be ameliorated by entering into treaties with foreign potentates, which enlarged the rights of their subjects. It is curious to note that the doctrine of "alien enemies" was sought to be extended at one time in English law to persons of a different faith than Christianity, so as to make heathens in the wide sense "perpetual enemies," but largely through the development of commerce, the English courts had discarded the doctrine of "perpetual enemies," as applied to non-Christians prior to our American Revolution. (*Ormichond vs. Barkis*, *Willis Reports*, 538 (1775)). The feudal system, of course, emphasized the ownership and control of *land*, and denied rights in and over lands to aliens, and this still underlies the chief civil legal disabilities of aliens, rights in land in our own country (other than questions covering exclusion and expulsion of aliens), though legislation in various States, and

treaties between the United States and foreign countries, have largely superseded these disabilities, too. The English common law's emphasis upon rights in *real estate* at an early day minimized the disabilities of aliens in other respects, so that the right of aliens to own *personal property*, and to sue with respect to their rights, was developed at an early date.

In the United States, the most serious disabilities of aliens arise in connection with legislation for the exclusion or expulsion of various classes of aliens. After the short-lived and unpopular Alien and Sedition Acts expired, just prior to Jefferson's administration, the federal government made no comprehensive attempt to regulate immigration until 1882. It will be remembered that the constitutionality of the Alien acts, in view of the absence of express constitutional authorization, was bitterly agitated, particularly by Jefferson and Madison, and in an early draft of his first Presidential Message, Jefferson had even written in 1801: "Every man has a right to live somewhere on the earth, and if somewhere, no one society has a greater right than another to exclude him."

While the constitutionality of these laws was originally sustained, with respect to exclusion acts, as a regulation of foreign commerce, it soon became necessary to invoke some other authorization, and this was found in the essential attributes of sovereignty, possessed by all independent states. Being unexpressed, this power was also held to be in large degree unlimited, as long as it concerned itself merely with exclusion and expulsion of aliens, but the Supreme Court was compelled to hold, in *Wong Wing vs. U. S.* (163 U. S. 228), that provisions of the Chinese Exclusion Laws, authorizing imprisonment of aliens claimed to be here unlawfully, for definite terms, without the usual incidents of a judicial trial for crime, were unconstitutional. Perhaps the most unpardonable act we committed as against aliens was passing the Act of Oct. 1, 1888, which permanently forbade re-entry of Chinese laborers when returning to the United States, armed with a U. S. Government return certificate, which was valid, by express terms of the treaty with China, when they left on the faith thereof; but this act was sustained, though concededly violative of treaty faith, in the Chinese Exclusion Cases in 130 United States, 581. In the *Ju Toy* case (198 U. S. 253) even disregard at our gates of uncontradicted evidence of American citizenship by administrative officials, resulting in exclusion, was held non-reviewable in our courts, but in the *Chin Yow* case (208 U. S. 8) a refusal to receive the alleged alien's testimony was held to be a

denial of even such "due process of law" as is requisite in administrative proceedings. In *Ng Fung Ho vs. White* (259 U. S. 276) it was held that a deportation warrant cannot be sustained on constitutional grounds where one actually found here asserting a claim to American citizenship, offers evidence of such citizenship which would suffice, if credited. Judicial proceedings, instead of mere administrative ones are then essential.

Strangely enough, our courts have almost uniformly overlooked the fact that Magna Charta had an express provision in it (Ch. 30), according to

"foreign merchants . . . safe and sure conduct to depart out of England, *to come into England, to tarry in and go through England* as well by land as by water, to *buy and sell without any manner of evil tolls*, by the old rightful customs, except in time of war." (See construction in "*Hale's Pleas of the Crown*" I 93; Am. Ed. of 1847.)

England, however, in our own day, denied all judicial relief to aliens, to determine their complaint that they were being illegally excluded (*Musgrove vs. Chun Teong Toy* (1891) Appeals Cases 272), unlike our own courts, which have always recognized habeas corpus as a remedy open to them, to secure for them at least the "due process of law" requisite in administrative hearings. Our courts also at last recognized that fundamental error of law in exclusion and deportation proceedings, including absence of all adverse evidence, and unfairness, require relief on habeas corpus in both entry and deportation proceedings (*Gegiw vs. Uhl* 239 U. S. 3; compare *Davies vs. Manolis* 179 F. 818 at 821-2 C. C. A.)

The right to expel aliens who had concededly entered lawfully, because of non-registration, for instance, without jury trial and with a reversal of the burden of proof, was seriously doubted, until the Supreme Court, by a divided court, sustained the Chinese Registration Act in the *Fong Yue Ting* case (149 U. S. 698).² Similarly, we had on our statute books for some years, the statute authorizing administrative deportation of aliens duly admitted, the unconstitutionality of

² A State of Michigan registration of aliens act, with deportation as a penalty was, however, adjudged unconstitutional in *Arrowsmith vs. Voorhies* 55F (2d) 310, though the deportation was probably intended to take place through federal agency only. This was in line with *Exp. Ah Cue*, 101 Cal. 197, though that case as reported did not indicate that the California statute involved (reprinted in U. S. Immigration Commission Reports, Vol. 39, pp. 558-564, entitled "Immigration Legislation") contained registration of Chinese provisions, with deportation as a penalty.

which was commonly assumed, until the law was sustained in *The Japanese Immigrant Case* (189 U. S. 86), and the law has, of course, been enormously extended since. The necessity of according administrative due process of law in deportation proceedings was read into the statute by the Court, though not expressed by Congress. One of the best expositions of the rights of resident aliens in general is to be found in *Lau Ow Bew vs. U. S.* (144 U. S. 47) holding that resident Chinese merchants were not required to furnish the statutory certificate on re-entry, though in form exclusive evidence for all Chinese, as the proof of their status was to be found here, not in China. Our situation as the chief immigrant-receiving country of the world makes limitations upon the rights of aliens far more serious and extensive than more or less similar laws in other countries.

When our Government began, practically all our States had in force the English legal disabilities of aliens as to holding or inheriting lands. Almost at the beginning of our Government, however, our country began to enter into treaties with the chief leading countries of Europe, authorizing their subjects to own or lease lands for residential and commercial purposes, and these treaties were soon held to supersede inconsistent state laws, by virtue of the novel American principle, that such federal treaties were self-executing, and repealed inconsistent state laws. Gradually, nearly all our states modified their own statutes, too, as to legal disabilities of aliens over land, and in nearly all of our States, aliens stood on the same basis as to land as natives, though in several of them, these clauses were coupled with provisions, making such rights depend on the foreign states' conferring reciprocal rights on U. S. citizens. Latterly, however, in the recent Pacific Coast group of cases involving prohibitions upon non-naturalizable persons owning or leasing land for agricultural purposes, serious novel State limitations have been sustained, permitting the curtailment of rights of non-naturalizable persons, like Chinese, Japanese, etc. (*Terrace vs. Thompson*, 263 U. S. 197, *Porterfield vs. Webb*, 263 U. S. 225, *Webb vs. O'Brien*, 263 U. S. 313.) Treaties as to right to use lands for residential and commercial purposes were construed as not covering *agricultural* use, and the prohibitions have been extended to mere *leasing* for short periods, and ownership in stock in agricultural corporations. It is obvious that if mere *leasing* of lands for short periods may be prohibited, danger might arise at the instance of particular States, that classes of aliens cannot secure lands to lease for essential dwelling purposes or commercial purposes. Very recently in *Jordan vs. Tashiro* (278 U. S.

123, Nov. 19, 1928) leasing of land for private hospital purposes, both by individuals and corporations, was held to be authorized by the Japanese treaty clause as to lands for commercial purposes, the California statute having authorized non-naturalizable persons to own or lease lands only for the purposes authorized by treaties of the United States. Still more recently, in *Nielsen vs. Johnson* 279 U. S. 47, the Supreme Court on Feb. 18, 1929, struck down a state succession tax on aliens as inconsistent with federal treaty. But the U. S. Supreme Court held recently in *Todok vs. Union Bank of Harvard* 281 U. S. 449 that, in general, treaty provisions in favor of aliens merely abolish discriminations against aliens and should not be construed as according to such aliens greater rights than our own citizens enjoy.

Of course, statutes forbidding use by aliens of public property, such as hunting, fishing and mining have been sustained, as the public has a special interest in such property which it may withhold from aliens. So also in *Patsone vs. Pa.* (232 U. S. 138) laws forbidding aliens to possess rifles for hunting were held not to be violative of the 14th amendment, nor of the right to "trade" under the treaty with Italy. Similarly, it is of course settled (*Heim vs. McCall*, 239 U. S. 175; *Crane vs. People of N. Y.*, 239 U. S. 195) that laws prohibiting aliens from being employed on public works are valid, these being peculiarly subject to legislation regulating the same. So also laws withholding the benefit of Workmen's Compensation Laws from non-resident aliens have been sustained (*Liberato vs. Royer*, 270 U. S. 535), despite a provision in the Italian Treaty applicable to ordinary negligence cases. The novel compensation laws need provide only for dependents within our own territory.³

Discriminatory laws forbidding licensing of aliens to sell liquors were also sustained as constitutional in pre-Volstead days, and in *Ohio ex rel Clark vs. Deckebach* (274 U. S. 392) an Ohio anti-alien pool room licensing act was accordingly held not to be violative of the 14th amendment, nor "trade" within the English treaty. Of course skilled public occupations, like law and teaching, are commonly confined to U. S. citizens, as is also medicine.

Particularly important and a landmark in American constitutional law is the case of *Yick Wo vs. Hopkins* (118 U. S. 356) (1886). There,

³At the May, 1932, annual meeting of the National Conference of Social Work, papers were read, pointing out that in a number of States, legislation according emergency relief discriminated against aliens, but however ill-advised as to policy such legislation is, it raises no question of power.

San Francisco adopted an ordinance making it unlawful to engage in the laundry business within corporate limits without the consent of the board of supervisors, except in a brick or stone building, no other conditions being laid down. It was held that arbitrary discrimination practiced hereunder against Chinese laundrymen was a violation of the 14th amendment, and that that provision covers alien residents as well as citizens. The opinion of Justice Matthews in this case is one of the most frequently cited cases ever decided.

Scarcely less important and farreaching is *Truax vs. Raich* (239 U. S. 33) (1915), in which Mr. Justice Hughes, speaking for the Court, held an Arizona law unconstitutional under the 14th Amendment, requiring any one engaging over five workers to employ not less than 80% citizens under criminal penalties. The court said that

“the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. . . (The contrary) would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work.”

Even previously, in *Juniata Limestone Co. vs. Fagley* (187 Pa. 193) a law taxing employers of aliens for each alien they employed, had been held to be unconstitutional. So also the Michigan courts had held, in *Templar vs. State Board* (131 Mich. 254) (1902) a statute unconstitutional, forbidding licensing alien barbers. Whether peddling may be limited to citizens is in doubt. In Maine, in 1900, the Court held such law unconstitutional in *State vs. Montgomery* (94 Maine 207), but the Massachusetts Supreme Court, in *Comm. vs. Hana* (195 Mass. 262) (1907) sustained the law because *licensing* was involved, refusing to follow the Maine decision, and considering the liquor licensing cases as analogous.

Since then, however, the U. S. Supreme Court, in *Asakura vs. Seattle* (265 U. S. 332) recently held a Washington statute forbidding licensing of aliens as pawnbrokers, illegal, because violative of the Treaty with Japan, authorizing pursuit of “commerce,” though properly a subject matter for licensing, and it is believed that the mere cover of a license requirement will not now sustain an anti-alien peddling act, despite the license form. If so, numerous anti-alien peddling and other laws will be declared unconstitutional, including the quite recent New York statute involved in the decision in *Miller vs. Niagara Falls* (207 App. Div. 798) which sustained an anti-alien licensing law appli-

cable to non-alcoholic "soft drinks," because licensing was deemed authorized. In fact, in *George vs. Portland* 39 A. L. R. 341, 114 Oregon 418, an ordinance limiting the licensing of soft-drink dealers to citizens was held to be unconstitutional in an able opinion, and the accompanying note in 39 A. L. R. 341 collates many authorities on the general subject. So also in *Carvallo vs. Cooper* 228 New York App. Div. 719, an ordinance prohibiting aliens from conducting lodging houses was declared void. On the other hand, in *Wright vs. May* 127 Minn. 150, a statute limiting the occupation of auctioneer to citizens was sustained, and in *Morin vs. Nunn* 91 N. J. Law 510, it was held that licenses to operate automobile vehicles for hire may be confined to citizens. In an article by Prof. J. P. Chamberlain on "Aliens and the Right to Work" in the *American Bar Association Journal* for June, 1932, many cases and statutes on the subject are collated, and a recent increased tendency to legislate against aliens in this field is noted.

The right of the United States, like other countries, to discriminate against non-resident aliens in the absence of treaty, is settled as to various matters, like copyright, and even to grant a preference to local creditors, under the decision in *Disconto Gessellschaft vs. Umbreit* (208 U. S. 570). Often laws are based upon reciprocity, according rights to subjects of foreign countries only if they accord similar rights to our citizens.

Of course, the right under the war power to treat non-resident alien enemies as devoid of rights in war-time is settled, and was largely exercised by us during the late war, though we have since made property refunds. Some of our seizures were probably in direct violation of applicable treaties, but Congress may by statute violate treaties, despite the element of treaty faith involved. That war may have the unexpected effect of annulling and not merely suspending some treaty provisions, was held last April in the *Karnuth* case *supra*. An able opinion, recognizing the ameliorating effects of advancing civilization on the laws working a forfeiture of the property of alien enemies in war-time, was handed down by Judge Cardozo in *Techt vs. Hughes* 229 N. Y. 222.

Latterly we have encountered a series of statutes indirectly aimed at aliens, barring cherished rights of theirs, such as those involved in *Meyer vs. Nebraska*, 262 U. S. 390 (Instruction in Foreign Language); *Pierce vs. Society of Sisters of the Holy Name*, 268 U. S. 510 (Private Schools); *Farrington vs. Tokushige*, 273 U. S. 284 (Hawaiian Private Schools for Japanese); and *Yu Cong Eng vs. Trinidad*, 271 U. S.

500 (Philippine Law against Books of Account in Chinese). In each of them the statute was overruled as an unconstitutional restraint upon the rights of the aliens.

A complete enumeration herein of anti-alien discriminations is, of course, impossible, if only for lack of space. The courts are, of course, always embarrassed in striking down legislative action as illegal, and mere belief in the unwisdom of the act, does not render it unconstitutional. Often, too, scope must be left to the legislature, to classify aliens as a separate class, because particularly requiring regulation. It must be remembered that the carrying into the legislative field a century or so ago, or Bentham's maxim, "the greatest happiness of the greatest number," has led to an enormous amount of legislative activity, and democracy often seeks to give effect to the wishes, and supposed good, of the voting majority, even if it be at the expense of the non-voting, unpopular alien.

That Congress may discriminate under various circumstances against particular races of aliens is, of course,, clear, and necessarily follows from the treatment of the subject of the right of aliens by varying treaties with different countries, especially in a country, whose original Constitution recognized Negro slavery, with all its attending disabilities. Thus, in connection with naturalization, we have right along discriminated against certain races on the basis of their color, though the original limitation to "free white persons" in our first naturalization act was probably intended to exclude only the slaves, white, black and red, and the Indians in tribal life, who were to be taken into our body corporate only through treaties (Argument considered in *U. S. vs. Balsara*, 180 F. R. 694, C. C. A. and applied in *U. S. vs. Dow*, 226 F. 145 C. C. A. and in *In re Mohan Singh*, 257 F., 209).

It was generally believed that the acts emancipating the black man after the Civil War,—when aliens of "African nativity and persons of African descent" was added to "free white persons"—had wiped out this form of color discrimination, and Charles Sumner accordingly induced Congress to strike out the clauses entirely in 1874, when adopting the "Revised Statutes." Anti-Chinese feeling, however, became too powerful, and the clause was restored in 1875, and despite the express treaty and Chinese Exclusion Act provisions against naturalizing Chinese, the restored phrases in the naturalization laws were construed to forbid not merely naturalization of Chinese (See authorities collated in *U. S. vs. Wong Kim Ark*, 169 U. S. 649 at 697), but certain other non-Caucasians; and this prohibition has been enlarged latterly by

judicial decisions to include Japanese (*Ozawa vs. U. S.* 260 U. S. 178), Hindus (*U. S. vs. Bhagat Sing Thind* 261 U. S. 204) and Filipinos (*Hidemitsu Toyote vs. U. S.* 268 U. S. 402 at 409-11), despite many lower court decisions to the contrary, with the unfortunate result of making many "illegally naturalized" persons "men without a country."

The application of this racial discrimination to our Immigration laws, as applied to the Chinese, soon followed by Congressional mandate, no question of constitutionality arising, though earlier similar state enactments had been adjudged unconstitutional (*Chy Lung vs. Freeman*, 92 U. S. 275, reversing the California courts), and Congress in 1917 adopted still broader racial exclusion provisions, in barring under our Immigration Act, persons not racially naturalizable, and persons coming from certain Asiatic degrees of latitude and longitude, with specified minor exceptions. An earlier attempt to exclude unpopular Hindu laborers by administrative action under color of the Act of 1894, attempting to make excluding executive decisions binding on the courts, failed through judicial action on the Government's confession of error in the Supreme Court, after lower courts had sanctioned it on the extraordinary theory that the executive officials might rule that such persons, because unpopular, might find it difficult to get work, and *therefore* were likely to become public charges (*Healy vs. Backus*, 221 F. 358, C. C. A. 9th C; *Marshall vs. Backus*, 229 F. 1021, both rev. on confession of error, 243 U. S. 657). The confession of error was based on the ruling in aforementioned case of *Gegiow vs. Uhl*, 239 U. S. 3, the Government having invoked these rulings below, and my brief in the Supreme Court in the last cited case having frankly stated that these holdings showed how far unreviewable bureaucratic determinations might go. The national quota immigration laws of 1921 and 1924 followed. Much interesting and curious learning concerning racial discrimination is to be found collated in Stephenson's "Race Distinctions in American Law" (1910), and the pros of regulation of immigration by international agreement, instead of statute, are interestingly collected in a very able work, little known in this country, issued by the International Labour Office of the League of Nations, entitled "Emigration and Immigration, Legislation and Treaties" (1922), now expanded into a new work, entitled "Migration Laws and Treaties," in three volumes (*Compare Cheung Sum Shee vs. Nagle*, 268 U. S. 336, and *Karnuth vs. U. S.* 279 U. S. 231. April 3, 1929). Above cited authorities, however, especially *Yick Wo vs. Hopkins supra*, show that administrative, as distinguished from legislative, discriminations because of race, un-

authorized by statute, are illegal in the United States (See further as to this, brief of Judge Elkus and myself in *Matter of Skuratowski*, reprinted in U. S. Immigration Commission Reports, Vol. 41, pp. 160, at 176-181).

Recently, Congress, in considering bills for the next Congressional Apportionment, heard arguments of various members, pro and contra, as to the supposed right to exclude "aliens" in their computations, and an amendment to that effect was defeated before Senate bill 312 was approved on June 18, 1929, largely on the basis of the argument of Senator Reed (of Penn.) against its constitutionality. Thereafter, however, proposed constitutional amendments to that effect were offered. A very able opinion on the question whether the word "person" in the Constitution can exclude resident "aliens" was prepared by C. E. Turney, Legislative Counsel of the Senate and printed in the "Congressional Record" of May 23, 1929 (Vol. 71, pp. 1821-2). Of course, it was scarcely contended by any one that "aliens" are not "persons" within the Bill of Rights and 14th Amendment provisions of the Constitution; but the authorities on other provisions as well, are ably collated in this opinion, and it deserves wider attention than it secured, though a full transcript was distributed as a Foreign Language Information Service Interpreter Release, under date of July 10, 1929.

It should also be noted that efforts have repeatedly been made by recent Presidents of the United States, particularly Presidents Roosevelt and Taft, in their Presidential Messages, to induce Congress to enact a law, granting aliens relief in the federal courts for violation of their treaty rights, actual or threatened, particularly in the case of mob violence directed against them, both through statutes making such actions federal crimes, and by authorizing issuance of injunctive process in their relief. Chief Justice Taft was particularly zealous in this direction, one of his latest arguments in favor of this course having appeared in "International Conciliation," (No. 116, July, 1917) under the title "The Treaty Rights of Aliens," and he treated it more fully under the title "Shall the Federal Government Protect Aliens in Their Treaty Rights" in his book "The United States and Peace" (1914). This indicates the desire of leading American statesmen and jurists to afford special protection to aliens in this country, and the American Bar Association has urged such enactment repeatedly. The suggestion reminds one somewhat of the strange early English custom, resting on statute, to accord to alien defendants, in criminal cases, a mixed jury, half native, half alien, because of presumed prejudice against them

(Halsbury's "Laws of England" I. 309; 4 Moore's "International Law Digest," Sec. 536). In our own country, such statutes were often held not to have become part of our "common law," because it was assumed that here there was no serious danger of such discrimination, and on the score of inconvenience. The authorities, in the absence of an express repealing statute, were almost equally divided, many holding such statute in force here (*U. S. vs. Carnot*, 2 Cranch C C 469; *U. S. vs. Curtacho*, an unreported decision by Chief Justice Marshall and Judge Tucker, cited in the former opinion; *Respublica vs. Mesca*, 1 Dallas 73; *Peo. vs. McClean*, 1 Johnson 281; contra, *State vs. Antonio*, 11 North Carolina 200; *U. S. vs. McMahon*, 4 Cranch C C 573; compare *Peo. vs. Chin Mock Sow*, 51 Calif. 597; *State vs. Fuentes*, 5 La Ann. 427, citing a Massachusetts case *contra*).

An international conference was held in Paris in November and December, 1929, discussing the questions of proposed equal treatment for nationals and foreigners, convened under the auspices of the League of Nations, beginning Nov. 5th, at which the United States was unofficially represented by an "observer," Mr. George A. Gordon, First Assistant U. S. Secretary of Legation at Paris. The question of admission, immigration regulations and procedure was expressly excluded from consideration under the terms of the resolution of the Assembly of the League, calling the Conference, adopted Sept. 23, 1929. This resolution recited belief that

"international cooperation would ensure the best and fairest conditions in the establishment and economic activity of citizens of one country in the territory of another"

and requested the proposed Conference

"to examine the provisions of a Draft Convention in the most liberal spirit, and with the sincere desire to bring about the recognition, in matters relating to settlement and kindred questions, of a system of equity and liberty totally excluding any possibility of discrimination in the treatment of nationals and foreigners, and ensuring them every facility for the exercise of occupations and trades."

The conference was, however, unable to agree on any formulation and adjourned Dec. 4th, 1929. Its proceedings were published in full by the League in a book of over five hundred pages, entitled "Proceedings of the International Conference on Treatment of Foreigners."

Apart from the matter of right to exclude and expel aliens, resident aliens are, however, for most purposes on a footing with citizens as to

civil rights, thanks to our Constitutions and Treaties, despite the large number of isolated exceptions, such as have been enumerated⁴.

⁴In order to avoid insertion of numerous foot-notes, reference was deferred in the text to this concluding note, enumerating some earlier writings by the author hereof, in which the subject was more fully treated. See his "Un-American Character of Race Legislation" contained in "Annals of American Academy of Political and Social Science" Vol. 34, No. 2, Sept., 1909, volume entitled "Chinese and Japanese in America" and separate reprint, "The Right of Asylum, with Particular Reference to the Alien" in "American Law Review", Vol. 51, pp. 381-406 (1917); "Immigration and Racial Discrimination" in "Judaean Addresses, Selected," Vol. III (N. Y., 1927), pp. 146-165; and review of Bouve's "Exclusion and Expulsion of Aliens" in the "Political Science Quarterly" (1913), Vol. 28, pp. 688-90.

WHY REGISTRATION OF ALIENS IS INADVISABLE*

I had occasion from 1894 to 1898 (a subsequent year as special assistant in 1899 is irrelevant) to serve the Government as Assistant United States District Attorney in New York City, and part of my duty was action in connection with Chinese deportation proceedings—deportation proceedings under the Geary law. That act, as amended, afforded six months to register, from November, 1893, so that the complaints of non-registration arose just about the time I became active on behalf of the Government. I have, since then, had occasion to argue in the Supreme and other courts a number of Chinese exclusion cases for the Chinese persons. They came to me after I got out of office. I live in New York City, where we have practically no original Chinese entry cases whatever. Smuggling had been taking place, but it has been on the frontier, away from New York City, and I have not liked, and have preferred to reject, original entry cases in the first instance altogether, because I am not blind to the fact that there has been a certain amount of irregularity and fraud, especially in connection with claims to American citizenship on the part of the Chinese. I have written extensively on the Chinese exclusion law machinery, and the terrible hardships involved. I have seen the Government point of view, and I have been on the other side, and studied the question carefully, and I want to say that, in my opinion, no greater blow has ever been suggested at the alien population of the United States than this registration, with its penalty of deportation, and with the use that undoubtedly will be made of the results that will thus be secured by over-zealous and oftentimes unscrupulous petty officials. I am going to tell you some of the points that have occurred to me in my own experience, and how those Chinese exclusion laws have worked, and, if I am correct, convince you gentlemen that you ought to pause before you establish a registration law for aliens in general.

I am aware of the fact that there has been, of recent years, scarcely any discussion of that question. The matter is now very vividly before us in the form of the President's recommendation and the recommendation of the Secretary of Labor on the subject. They have not been familiar with the workings of the past laws, and they do not realize, in

* Argument at a hearing before the House of Representatives' Committee on Immigration and Naturalization, January 5, 1923.

my opinion, what will be the results with regard to that. When I was here, 10 years ago, or so, I said something, or started to say something, about registration, and Judge Goldfogle interrupted me and said, "There is no need of going into that; there is no danger that any such un-American enactment will take place." We have not discussed that question at any length, but it is an important one, and we, who are friends of alien residents of this country and of the country at large, are proposing conducting a campaign of education on that point, and I was anxious to submit, first of all, my own views on that question as frankly and fully as I can, for what they may be worth to this Committee, so that you might have the information of some one who has given a great deal of thought to that question since 1894.

Mr. Raker. Do you remember at the same time, under the same circumstances, with the same committee here present, a discussion was had, and it was a question by one of the committeemen as to the exclusion of those who believed in sabotage, and a similar remark was made?

Mr. Kohler. I am quite sure I did not happen to be present then. I would like to call attention to the fact that the Secretary of Labor in his report—I do not know whether you gentlemen have copies, I tried to get an advance copy—I quote from page 111, he takes up the subject of registration on pages 110 and 111, and on page 111 he frankly invokes the Chinese exclusion law precedent of *Fong You Ting v. United States*, reported in One hundred and forty-ninth United States, 698, as a precedent for this general registration. In their outlines, at least, the registration bills before this committee follow in general the Chinese exclusion laws. But the Secretary's report omits even the tag of identification—the Chinese name. I will analyze them more fully presently, but I do want to call attention to the fact that whoever framed these passages of the Secretary's report or gave him the information in question—I certainly believe it was not the Secretary himself—did something rather funny, unconsciously funny. After quoting that precedent, he also calls attention to the fact there would be nothing new in the idea, because we had, in fact, approved of the idea in the naturalization laws of the United States as enacted in 1798 and re-enacted in 1802. That is a euphemism for the fact that he is referring to the alien and sedition laws. Since we had a public denunciation of those laws in 1798 or thereabouts, not merely by Jefferson, Madison, and others, but by a lot of other great thinkers of our country, we have been rather careful not to invoke that precedent, and the man who wrote that for the Secretary evidently did not want to call the alien and sedition laws by their own

names as a precedent, and, perhaps he was not unaware of the fact that they caused so much agitation that the party that enacted them was driven in consequence from power for decades afterwards, so strong, justly or unjustly, was the feeling of the country against segregating the aliens and requiring them, for instance, to register. Now, the registration itself, as I will presently show, is bad enough, especially in view of the use really intended—perhaps not really intended, but which really will be made—of the results of the registration. But what I deplore particularly are the penalties of deportation and the probable use in starting a man-hunting crusade throughout the country, covering, according to the Secretary's figures, 7,000,000 unnaturalized aliens here, which will create dangers and friction which are hard to realize or exaggerate.

Mr. Raker. Would you pause a moment right there on the alien and sedition laws? Two years ago I tried to make a study of them, and I read up on many of the cases, and the sedition feature of it is what caused most of the trouble, was it not—the trials for sedition?

Mr. Kohler. Largely; but not wholly. But it was not merely a question of "trials." I wrote a pamphlet, which perhaps you gentlemen may want to make a part of my record here, at the request of the American Academy of Political and Social Science in 1909, entitled "Un-American Character of Race Legislation," which deals particularly with the Chinese exclusion law machinery, but it is somewhat broader, and in it I cite references to the historical discussion of the alien and sedition laws in a note therein, to which I had given quite a little attention. It was also printed in their volume entitled, "Chinese and Japanese in America."

Mr. Raker. Did that require the aliens to be registered?

Mr. Kohler. It did, yes. And the Secretary refers to that fact, too.

Mr. Raker. But not in the method the Secretary of Labor now suggests?

Mr. Kohler. Practically that; and he himself refers to the analogy.

Mr. Raker. I sent to the library and got the original laws and many of the decisions.

Mr. Kohler. You will find most of the decisions collected in Wharton's American State Trials.

Mr. Raker. Yes.

Mr. Kohler. I was very much interested in the question myself, and that is why I wrote this.

Mr. Raker. I drew the conclusion that practically all the trouble grew out of the trials for sedition.

Mr. Kohler. That conclusion, in my opinion, and based on my study, is not warranted. It was not only the sedition laws (which came before the courts) that were complained of, but the alien laws as well. The sedition laws did cause a lot of trouble.

The Chairman (Mr. Albert Johnson). Without objection, the pamphlet to which you refer will be added as an appendix to this part of the hearings.

Mr. Kohler. Thank you. Now, the President, in his discussion of this measure—I quote from the Congressional Record of December 8, 1922, page 215—goes somewhat further as to the purpose than the Secretary of Labor does, and I want to call your attention to what he says. He says: "This provision will enable us to guard against the abuses in immigration, checking the undesirable whose irregular coming is his first violation of our laws." He proceeds to connect it with a matter that appeals very much to me, the matter of educating aliens, as to which I will presently say something more, and I have already called attention to the fact that by a strange coincidence, a society I am active in, the Baron de Hirsch Fund, did pioneer work along these lines since 1890, and there is nothing that appeals to us more than that. The Secretary, in his discussion, is a little more guarded. In fact, he says he "should strongly oppose any enrollment, if it were to be conducted as a system of espionage." He also refers to the desire to have educational opportunities afforded through registration, but, strangely enough, under his bureau, not the Commissioner of Education, but he goes on to add: "It is, however, true that such an enrollment for educational direction would automatically bring to the notice of the Government those who actively resisted organized government." If any method is available—and I think a different one is—to get rid of the anarchists, nothing would suit me better. He goes on to say, however, that he wants to include those "who are disposed to treat lightly institutions of law and order," and "deportation is an adequate remedy for this evil and it should be exercised." That is his language, and as I have already pointed out, the President is much more comprehensive. We have had some very unfortunate experiences in unintended uses of provisions in our immigration laws before this.

Mr. Raker. Would you suggest there the distinction, before you leave that, of registering the aliens, and the registering of all those of military age during our last trouble, as well as the registration of all those who desired to vote, as well as the registration of all children in most of the States who are of school age? Where do you draw the distinction?

Mr. Kohler. I will be glad to do it. First of all, the one does not segregate them from the rest. The war act, as regards alien enemies, did it; but I do not think you want to have every alien in the country put on the basis of being regarded, or regarding himself, as an enemy, because he is an alien. There are no penalties, to say nothing of deportation, for failure to register for voting, and as far as the registration of school children is concerned, that, besides, is adequately covered under State agencies, and there is no danger of this espionage for all sorts of possible purposes. I am coming to that further in connection with the legislation of that kind.

Mr. Raker. What distinction is there between registering for espionage and registering the man who wants to vote and the man who does not?

Mr. Kohler. I was coming presently to some of the questions in connection with immigrants which have come up and are bound to come up, where I will touch upon the question of espionage. You have asked me about it, and I will tell you at once, now. I have perhaps had the closest systematic examination made that ever was made, of the accuracy of some of the information given as to aliens on some of the manifests of the vessels bringing them over and the checking up of those records. I did so in 1913-4 before the literacy test was enacted in a rather interesting investigation which was published as a Senate document in the Sixty-third Congress, second session, Document No. 611, a "Report of a special committee of the National Jewish Immigration Council, appointed to examine the question of illiteracy among Jewish immigrants, and its causes." We wanted to find out what the facts were, and whether the Government reports were correct or not as to Jewish illiteracy. On the one hand, we had a lot of people on the East Side who told us, "Oh, it is impossible that the Jews, who have always valued knowledge so much, and learning, could run 26 per cent illiterate"—between 24 and 26 per cent. On the other hand, we had this tabulated manifest information referred to. We wanted to know what the facts were in connection with Jewish immigration, and a possible literacy test. I had an investigation made of several hundred or a thousand cases, an unofficial investigation, one at New York of Jewish immigrants admitted in a certain time, and another one of the women in New York, the Jewish women, and another one in Galveston. I was a member of Mr. Schiff's "Galveston Information Bureau" that he organized, and we spent \$250,000 of Mr. Schiff's money in order to try to keep many Jewish immigrants from going to the larger cities and to distribute them, by

inducing the steamship companies abroad to send them down to Galveston, and we would thereafter try to find positions for such immigrants that came there, west of the Mississippi, in order to keep them away from the large cities. No one had a position beforehand. We knew the importance, not being employers having positions for them, to find them at not less than prevailing rates—we covered all that. But what happened with regard to them? That committee was formed with the then Secretary of Labor and the Commissioner General of Immigration's sanction and approval. The information division provision of the Federal immigration law was part of the same general thought. It was recognized by us how highly important it is to distribute the immigrants, and not have them go so largely where their relatives were in the large cities, but to distribute them throughout the country. This was one of the noblest philanthropies I think that has ever been started—constructive as well as altruistic. We started under Government auspices. After a little while the Government inspectors broke that up. They came with unfounded claims that our charges were likely to become public charges, and that we were violating the contract labor laws, and then the Attorney General, Mr. Wickersham, finally decided that was not the case and there was not a color of justification for the claim. But they started to examine them so rigidly every which way in order to have some reason—I was not able to find out why—to exclude them and break up that scheme. It was started under Government auspices, and a quasi Government agency, and they came that way in numbers, notwithstanding the fact that the ships had a much longer voyage, and the inducements we offered were not such as especially appealed to them, as they also wanted to live in the large cities where their friends were; still they were coming over here, until the Government stopped that thing by making it ten times as hard for any immigrant who came to enter at Galveston, as elsewhere.

Mr. Box. Would you tell us the reason for that hostility?

Mr. Kohler. It was started virtually by the excessive zeal of the local inspector down there, who wanted to establish, as Government officers often do, a record for superior efficiency, and unfortunately—I want to be frank—it has become in many circles almost synonymous for some people to say that efficiency in the Immigration Service means harshness and injustice to the immigrant, and the more people that are kept out, the more "efficient," in some high official circles, even, that officer is.

Mr. Cable. He gets a square deal at Ellis Island, doesn't he?

Mr. Kohler. Do they now get a square deal?

Mr. Cable. Yes?

Mr. Kohler. I think we do, as far as the mental caliber of some of the Government inspectors permits, but I read the other day of an Inspector who heard that some one or other connected with Karl Marx, the founder of the socialists, who died some forty-odd years ago, was coming over here, and he promptly assumed that that man, Karl Marx, was a revolutionary, and he must be in Russia—and when his nephew or the son-in-law, I think it was, of Karl Marx, came over here, and was questioned before the board, he was asked, “Are you personally acquainted with Karl Marx, and have you met him in Russia?” That bears on the general question.

The Chairman. He might have meant the Karl Marx bible, or theories, rather than the physical Karl Marx.

Mr. Kohler. I do not think the man’s question indicated he had any such thought in mind, but I am wondering. I was asked this question, and I tried to answer it.

Mr. White. Would you care to state at this point what success you had, as far as your enterprise extended down there? How did you get along with it?

Mr. Kohler. We located quite a lot. I do not remember the numbers. You will find a lot of interesting information on this work in volume 41 of the reports of the United States Immigration Commission which is entitled, “Statements and recommendations submitted by societies and organizations interested in the subject of immigration”; and these different Jewish societies referred to here, including two I represent, submitted elaborate statements printed there (pp. 139-293). There was a separate report, also, from this Jewish Information Bureau, on “Removal Work, Including Galveston,” showing just what was done (pp. 303-321), prepared by Mr. David Bressler, and we were quite successful.

Mr. Box. It is not an official document?

Mr. Kohler. It is an official document, volume 41 of the Immigration Commissioner’s reports.

Mr. Box. That report is printed in it?

Mr. Kohler. Yes; and it has reports from the Young Men’s Christian Association on immigration work, the Council of Jewish Women, and so on.

Mr. Box. What year?

Mr. Kohler. It is in the immigration reports of 1911.

The Chairman. Have you gotten through with your Galveston statement?

Mr. Kohler. With the Galveston statement, yes.

The Chairman. As a matter of fact, after your folks had gotten your Galveston settlement plan going pretty well, did not the steamship people begin to take advantage of it, and to transfer people rejected at Ellis Island to Galveston—not necessarily Jewish people?

Mr. Kohler. I never heard of it.

The Chairman. And a large number of Jewish people?

Mr. Kohler. I never heard of it.

The Chairman. The record will show.

Mr. Kohler. There was no such complaint against us.

The Chairman. No.

Mr. Kohler. And it was going against our Jewish immigrant protégés, to claim this altruistic scheme was a violation of our laws.

The Chairman. The complaint was that the steamship companies took advantage of your efforts to keep the aliens out of the big cities, and that aliens who were rejected at New York were carried across the water sometimes and then brought back to Galveston.

Mr. Kohler. You either do or do not want to distribute immigrants. If you do want to distribute immigrants, one of the best ways is to land them at some place outside of the big cities, where otherwise they have a decided disposition to stick, and the small incident you refer to, of a small incidental evasion can occur almost anywhere, in the regular ports even better, and the people did not have to go to Galveston for that purpose . . .

The Chairman. Now, we are getting away all the time from what you came here for, and I am going to limit the time to the matters that are pressing.

Mr. Kohler. I would prefer to confine myself to that.

The Chairman. It is nearly 5 o'clock, and it would answer, perhaps, if you were to write out a complete statement on registration, and send it in to us.

Mr. Box. I move that we allow him to proceed without interrogatories.

Mr. Raker. And that he confine himself to the subject of registration.

Mr. Kohler. May I suggest that questions, except perhaps as far as registration is concerned, be deferred until I get through.

The Chairman: Yes; we will be glad to do that.

Mr. Kohler. Now, there are two bills here before your committee in regard to registration. I prefer to call the one, H. R. 10860, a typical bill, because I am going to criticize it and it is a composite of

earlier bills. I want to publicly state that in connection with the literacy test, I found its author most kind and most sympathetic and most interested, while upholding the principles he stood for, to meet any objections that might be made here; so that I want, if possible, to avoid anything that might be construed as a personal criticism.

The Dillingham bill was somewhat similar to this, years ago.

The Chairman. This bill you have in mind is intended more or less as a revision of the naturalization laws.

Mr. Kohler. Yes; but it has in it a registration provision, title 3.

The Chairman. Now, then, we can simplify it a whole lot. We will take your objections to that bill and be glad to have them, but the committee has suspended for the present further discussion of that bill, after long hearings, on account of the difficulties of providing a penalty, and on account of the difficulties of putting the system into effect.

Mr. Kohler. Let me say, first of all, our Jewish organization, representing all of the Jews in the country, even at a time when we did not think this bill would be in the least likely to pass, are on record as opposing registration. We opposed it before this committee; we opposed it on the objection of the American Jewish Committee, representing the orthodox as well as the reform Jews, and my organization, the board of delegates of the Union of American Hebrew Congregations and the I. O. B. B. made recommendations against it before the Immigration Commission.

Mr. White. What is the I. O. B. B.?

Mr. Kohler. The Independent Order of B'nai B'rith. In signed statements in connection with provisions of the Dillingham bill, signed by Judge Elkus, Mr. Louis Marshall, and myself, in 1912, we opposed registration of aliens and I would like to make part of this record, section 3 of that paper, in the form in which I have it. The other sections are irrelevant.

(This section is as follows:)

"Section 18 requires all aliens to secure, in duplicate, 'certificates of admission and identity' and return certificates.

"This establishes a species of ticket-of-leave system for all aliens. It is not apparent why such certificates are required, since the act does not provide that such certificates shall be the exclusive right of establishing a residence here, as is the case under the Chinese exclusion law. If it were made exclusive, it would result in serious oppression, because of the likelihood that certificates might be lost, that changes in

appearance may take place, and that it is practically impossible to distinguish aliens from American citizens and aliens who have previously come to this country and who are not required to have certificates.

"The enforcement of this provision would cost millions of dollars, because to make it effective, it would be necessary to employ an army of officials to issue the certificates and to make effective the provisions of the act. It would retard the entry into this country of all aliens, because the preparation of the certificate would be time-consuming; it would retard the departure of aliens in the event that they temporarily leave this country. Ignorance of the requirements of this statute would lead to noncompliance with its provisions, with the consequent exclusion and deportation of thousands of worthy men and women.

"Moreover, the very existence of such a provision would contribute to the creation of a sentiment hostile to aliens, which would be most deplorable.

"In the administration of this provision, serious difficulties would arise, not only in the case of aliens who have been lawfully admitted under existing legislation, but also in the case of foreign-born citizens who may have gone abroad temporarily. Should any questions arise with regard to their right of re-entry, their testimony, although uncontradicted, even in the case of United States citizens, might be arbitrarily rejected. The decision in *United States v. Ju Toy* (198 U. S. 253) is an illustration of this proposition. There it was held that a citizen could not review a decision by the administrative authorities that he was an alien.

"The greatest difficulties would arise in the case of women and children who can not be naturalized and who are not apt to take out the statutory certificate. They would be subject to arbitrary hardships.

"These registration requirements would be violative of most of our treaties with foreign countries. This was recognized by President Arthur in 1882, when he vetoed the act containing a compulsory registration provision applicable to all Chinese laborers. (8 Richardson's Messages of the Presidents, p. 116.) In the course of this document he said:

" 'We have treaties with many powers which permit their citizens and subjects to reside within the United States and carry on business under the same laws and regulations which are enforced against citizens of the United States. I think it may be doubted whether provisions

requiring personal registration and the taking out of passports, which are not imposed upon natives, can be required of Chinese. Without expressing an opinion on that point, I may invite the attention of Congress to the fact that the system of personal registration and passports is undemocratic and hostile to the spirit of our institutions. I doubt the wisdom of putting an entering wedge of this kind into our laws. A nation like the United States, jealous of the liberties of its citizens, may well hesitate before it incorporates into its policy a system which is fast disappearing in Europe before the progress of liberal institutions. A wide experience has shown how futile such precautions are, and how easily passports may be borrowed, exchanged, or even forged by persons interested to do so. If it is nevertheless thought that a passport is the most convenient way for identifying the Chinese, entitled to the protection of the Burlingame treaty, it may still be doubted whether they ought to be required to register. It is certainly our duty under the Burlingame treaty to make their stay in the United States, in the operation of general laws upon them, as nearly like that of our own citizens as we can, consistently with our right to shut out the laborers. No good purpose is served in requiring them to register.' ”

Now, let me call your attention to some facts in connection with the bill now before you, as to registering all aliens. You are here providing for registration, and you are providing not only for original registration but for an annual registration, and you are asking that a \$5 fee be paid by the immigrant for each registration, and you are establishing penalties of a terrible character, namely, deportation, for failure, not merely of the original registration but of subsequent annual ones without any effective excuse clause. No doubt inadvertently, the language of this bill, which provides for substitute registration if persons were “unable” to register, is utterly ineffective, in view of the precedents under the Chinese exclusion law registration, where it has been held, for instance, that if a person waited until the last week or so of registration, as so many people would be apt to do, and then say he is sick, that that is no excuse. The word “unable,” as an excuse for registration, is utterly inadequate, especially when they are going to be visited with the penalty of deportation, for persons who have burnt all their bridges on the other side and have all their interests and family here, but have not yet become citizens. The matter of the \$5 per head annual fee means a great deal to the immigrants who have come over here recently, who have enormous burdens, in view of the financial

difficulties we hear of now; the newcomer is apt to lose his position first of all in hard times, and those persons commonly have near relatives abroad, whom they are providing for out of their own pockets, and they come with very little money, especially under these war conditions, so that you do not have any idea how much of a hardship even that will be for them. But the great difficulty I have is that you are providing for registration annually at indeterminate places, and everybody is apt to err, apt to overlook that duty, and you are establishing deportation as a penalty for noncompliance with it on the part of children and women, even, as well as men, and you are providing that the persons in question, at their own risk, will really have to find out where they are to register, on account of the indefiniteness of these matters.

Now, I have already hinted, and I will take it up further hereafter, as to what uses might be made of this registration information. I started in, when I was interrupted before, to say that in my experience there is scarcely an immigrant who comes over here as to whom the manifest of the vessel does not give erroneous petty information, partly through mistakes of the interpreter and in bona fide misunderstanding, and partly through carelessness. I have used those manifests in court, and I know whereof I speak. This investigation I initiated of the illiteracy of the Jewish immigrants brought to light this extraordinary fact, that on the whole the Government figures were absolutely confirmed as regards totals, but there were, strangely enough, a number of persons we found to be literate who had been described on the manifest as illiterate, and there were quite a few we found as illiterate (as we expected) who had described themselves as literate, because all they could do was to read their Hebrew prayer book, and perhaps they could, just as well, have read it without their prayer book before them, as with it. But I mention that now to show that, with regard to every immigrant coming over here, almost without exception, there have been, though inadvertence, through carelessness on the part of the steamship company, through mistakes in interpreting the information given to them, some inaccuracies. Now, are these people to be regarded as "coming in here at our threshold in violation of our laws?" It is possible. Some of those bills are most sweeping, and this statute, as phrased, goes even further than the Geary law, by providing deportation under a warrant, in which the complaining witness is in effect the judge as well, while the Geary law at least gave this protection, that it required judicial proceedings.

Another thought at once comes up in regard to the possible question-

ing of the rights of the immigrant who comes over here: You ask them to report annually, as one of these bills says, to the marshal, which is an indication to him that you have something against the immigrant; that it is what the marshal or inspector thinks, and he will try to find it by hook or crook. And if you tell him he must register each year, there is also confessedly some reason besides this educational proposition—which I will take up presently—which induced that action.

Now, what are the further facts there? In a whole lot of cases people have been necessarily, in these war exigencies, helped to come over here by their relatives and friends, and sometimes an inefficient inspector, or a suspicious inspector, wanting to make a record, or a culpably corrupt inspector—and I am going to say something more especially about my personal experience in connection with this corruption presently——

The Chairman. We are getting a few of them into the jails now?

Mr. Kohler. Yes; those people will find grounds for the deportation of the people who have come over here, who have been aided, perhaps, beyond what a technical construction of the law might authorize, to come over here, by their relatives or friends, and have not disclosed the facts, and the burden therefore, perhaps, did shift under the law, upon them, on original entry. In some other cases, those people started out with a whole lot of money, and perhaps at the time they got to the steamship company they declared they had an amount of money, when perhaps they did not have that amount of money any longer, it having been dissipated or stolen, and perhaps some of them borrowed money. I have been told that, too. Are these venal crimes, without limit as to time? There is no statute of limitations here. Are they crimes which will justify the deportation of these people forever and ever afterwards?

But let me be a little more concrete. I object to this bill because it is violative of treaty. Our Government is on record as protesting against the registration of aliens where the aliens are United States citizens in a foreign country, when the foreign country attempts the registration, except under most reasonable conditions, and without serious consequences, for default.

I want to refer you to our leading authority on international law on that point, Moore's International Law Digest, volume 6, pages 316-318, where you will find Secretary Gresham, who, as you know, had been a distinguished judge before, protested against the registration of United States citizens in Cuba, where it exceeded the reasonable local require-

ments of registration, and you will also find another letter, by Acting Secretary of State Rockhill, in which he refused to accept the position that nonregistration could deprive our citizens in Cuba of the right to invoke the municipal laws in regard to their rights, and to exclude them from any rights in regard to personal property there. I will refer also to the fact that before we had any treaty with China, in connection with the exclusion of the Chinese laborers, President Arthur categorically stated that a registration law for the Chinese would be a violation of our treaty with China, already quoted in the paper of 1912, I filed.

Mr. Box. That was the Burlingame treaty that recited that people had an inalienable right to go where they pleased and when they pleased?

Mr. Kohler. No; when he wrote that we had already adopted the treaty of 1880, which authorized some exclusion of the Chinese, and it is right under that, and in connection with that, and we quoted it in the statement which Judge Elkus, Mr. Marshall, and myself thought applicable as violating treaty faith.

The Chairman. You would have no objection to a form of registration for arrivals in the future, which would do away with these steamship mistakes on manifests, etc.?

Mr. Kohler. I do not know whether you will get it any better in some other form. Ordinary registration before they reach Ellis Island and sent to the proper authorities, especially the Bureau of Education of the Government, or State educational agencies, I would have no objection to. I want to make this suggestion, which I think is constructive, and which I think will eliminate a lot of these difficulties. I think those sworn statements there in the ship's manifest are just about as accurate as you will get anywhere, the manifests of the steamship companies themselves. They are sworn to by the surgeon under the manifest sections 12 to 14 of the immigration law of 1917 and rule 2 of the Secretary's rules deals with it. Why can not you provide—you do not even need a statute—that the information you think you want as to the immigrant's name, age, the steamer the man comes on, and exactly where and to what address he is going, and what relatives he is going to join, shall be copied by the surgeon on the long voyage, or the purser—who will have sufficient time to do it because of the long voyage—on little separate slips, and have them send that information to the Government?

The Chairman. That is exactly what we have in mind to do, except we are going further, and have him start with it in his own country, and have that paper properly viséd in addition to having his passport viséd that he got on the other side.

Mr. Kohler. That is especially interesting, and I am also interested in having the State educational localities get the information as to the aliens and as an assistance to Congress in regard to dealing with adult immigration, which is a serious problem, so they may know where they are. The Kenyon bill, which passed the Senate in January, 1920, after a long and illuminating discussion, provided for such Federal subsidies to educational aid.

The Chairman. The cat is out of the bag; that is what the registration is likely to be.

Mr. Kohler. If it is confined to that—preliminary registration of the alien. The steamship company employees have plenty of time on the long voyage to do it, and it will be their act. The Senate bill put the Federal subsidies under the direction of the Federal Commissioner of Education, and not the Labor Bureau, which knows little about it, and you can attach such preliminary registration to such a measure, primarily under local State educational control.

Mr. Box. What is the objection to having it done when he is admitted, instead of having it intrusted to the steamship companies?

Mr. Kohler. The difficulty I have is this, first of all you will find that—perhaps the suggestion which some one has made—I do not know whether there is a pork barrel proposition at the bottom of it—that Ellis Island be rebuilt—will actually be necessary, if you are going to require every immigrant to sign papers there at Ellis Island before he gets out, and you will have a whole slew of trouble. The voluntary aid societies are doing what they can, and the Government is putting the immigrants on the train as quickly as it can, and keeping at Ellis Island only those under some sort of suspicion or awaiting necessary relatives, and I know from practice that you are going to create a very troublesome practical question there, if registration should be required there of every immigrant on entry.

Mr. Box. It will retard the work of the examiners, as I understand it, greatly magnify it and overtax the present force? I understand that is your position.

Mr. Kohler. That is it. What you could do, if you had those cards made out on board the ships; I do not see any reason why the inspector, when he passes the alien, might not simply O. K. those cards, perhaps.

Mr. Raker. Instead of making it 20 per cent, spread it over the year and make it 10 per cent a month, and then they would have plenty of time to handle it at Ellis Island.

Mr. Kohler. That might work, but in connection with the monthly

quota figures—you want to look out for the winter months. It is a real hardship for the immigrants in the steerage to come during the winter months, and the 20 per cent has this much more latitude, that at the time when it is reasonably possible for the immigrants to come over here, namely, during the spring and summer and early fall months, when the bulk of the immigrants come, the monthly quota ought to be larger; in the winter months very few do come, and the old people can not stand it at all, and have all sorts of sickness and die, so that unless you are going to regulate the monthly per cent only as an order for the consul to visé the passports, I am against a change from 20 to 10 per cent.

Now, as regards the question of constitutionality of registration, the Fong You Ting case, to my mind, is no authority on the constitutionality, even, of this measure. That dealt, first of all, with a case where the matter of nonregistration was left for the courts to pass on, and this measure deprives the immigrants here even of that protection, and, as I said, makes the inspector the complainant and really the final judge, because in 99 per cent of the cases his recommendation is adopted by the Secretary, or rather some one else acting in the Secretary's name.

Mr. Raker. We are doing that now, are we not?

Mr. Kohler. We are not doing it with regard to a question like registration, which is indefinite, which may come up, involving present-day facts, 25 years from now.

Mr. Raker. I know, but we are making, practically, the judgment of the inspector final.

Mr. Kohler. Not on the constitutional question. That is just what I wanted to call attention to. The Supreme Court of the United States recently handed down a decision, on May 29, 1922, in the case of *Ng Fung Ho v. Edward F. White* (259 U. S. 226), in which they have held that the Secretary's warrant can not constitutionally form the basis for a determination in proceedings to deport people who have been admitted into the United States, where the claim of citizenship is involved. They have gone back, to that extent, on the *Ju Toy* and *Sing Tuck* cases, and held it is not a case of the immigrant clamoring to enter here, but the case of an alleged alien who produces some evidence of his rights, and he can not, therefore, in spite of your effort to make the Chinese exclusion law in that respect the same as the general immigration law—it can not be done where citizenship rights are involved.

Mr. Raker. That is not really involved, because in the immigrant case he admits it is a fact that he is an alien, and in the Chinese case his whole contention is, and it is a question of fact, "that I am a citizen

of the United States, and, therefore, I have a right to go to court to prove whether I am a citizen," and he has a right to have the judgment of the court on that question. Is not that right? Is not that fair?

Mr. Cable: Mr. Chairman, a parliamentary inquiry.

Mr. Raker. He has answered it. (Laughter.)

Mr. Kohler. I want to say, in answer to that question, that, first of all, I do not know how many people who are citizens of the United States are going to be arrested, as has happened under the Chinese exclusion laws, under the erroneous theory that they are not citizens. There is no time limit, no statute of limitations on those acts. Twenty-five years from now, when the parents of those people and witnesses, and particularly as to birth—and birth at a particular place later is awfully hard to prove—may all be dead, you can have that person brought up and attempted to be deported, and I think the anarchists and criminals you are trying to get out, will not lose any time at all in attempting to claim they are citizens, just as in many cases bogus Chinese United States citizenship was being claimed.

The Chairman. I think we will have to stop. It is now 5 o'clock.

Mr. Kohler. May I make one other suggestion, and that is a rather practical question, too? I told you before I did not rashly refer to the corruption of Government officers under the Chinese exclusion laws. I have had some remarkable experiences in connection with that, covering a dozen cases or more, and I will be glad to furnish the names privately, if desired, to the chairman of the committee, but I prefer to say X, Y, and Z in my supplemental statement instead of mentioning the names of those inspectors, because I do not want to lug in those names.

Mr. Raker. They are down and out now, are they not?

Mr. Kohler. They are down and out now; yes. But I will say this much, in a Chinese exclusion law case, where I made an argument in the case, and the Attorney General delivered in his brief one of his stump speeches on the Chinese, going outside of the record, I took the liberty of meeting his challenge, and spread some of this in my brief in the Supreme Court of the United States, and I challenged him, if he dared, to correct me from the Treasury records resulting in dismissals on charges, and he remained silent.

Mr. Raker. You were both *dehors* the record.

Mr. Kohler. We were both *dehors* the record, but the attitude of the Government has been that, and I have seen both sides of the question, and I believe there was a great deal of corruption in regard to the Chinese-exclusion cases on the part of Government officials themselves.

In connection with the pending suggestion to exempt Armenian religious and political refugees, why not also the still worse afflicted Greek-Turkish exiles, for example? You may be interested in two papers of mine, one entitled "The Immigration Problem and the Right of Asylum for the Persecuted" (1913), which was reprinted in your committee's hearings of the Sixty-third Congress, second session, Part II, pages 199-210 (December, 1913), and the other entitled "Right of Asylum, With Particular Reference to the Alien," in *American Law Review*, May-June, 1917, pages 381 et seq. The former deals particularly with the right of asylum for the persecuted in English and American legislation and the comparative uselessness of the restricted language of the exemption on the subject later adopted in our literacy test act of 1917.

Mr. Box. You spoke about fraud in the administration of the Chinese exclusion laws. I presume that issue is pertinent in your mind?

Mr. Kohler. Yes.

Mr. Box. I do not want to involve anybody employed by any administration; I have no partisan question in mind, but I want to know, if you think there is anything in the service, or that has been in the service during the last dozen years, that would justify any man, alien or citizen, in believing that, as a general system or to any serious extent, fraud is prevalent in the service?

Mr. Kohler. You have used the word "prevalent."

Mr. Box. Prevalent to a substantial extent.

Mr. Kohler. There used to be a lot, and I fear there still is. For instance, are you familiar with the Peirce investigation commission of the State Department, some years ago?

Mr. Box. No, sir.

Mr. Kohler. Mr. Peirce, as I recall it, was Assistant Secretary of State. They sent him abroad to examine the consular officers in China, where passports were supposed to be viséd, and they found a whole slew of United States consuls and deputy consuls who were corrupt and whom they removed on account of that.

Mr. Raker. Those were abroad?

Mr. Kohler. They were abroad, and that is the difficulty with almost any effort to examine people abroad, much as I am in sympathy with it, because here you can watch the fellows, and there you can not, nor can you satisfactorily review their rulings on appeal.

(Mr. Kohler was given permission to file a supplemental statement, which follows; after which the committee adjourned.)

As to charges of misconduct against Chinese exclusion law officials, note the partial list of criminal prosecutions, in Mrs. Coolidge's very able book on "Chinese Immigration" (1909) (p. 315; compare p. 308), prepared with the assistance of the Carnegie Institution of Washington. The Peirce State Department report I have already referred to. It was printed as House Document No. 665 of the 59th Congress, 1st Session, and is entitled, "Report of Inspection of U. S. Consulates in the Orient." In almost every city in this country having a substantial number of Chinese residents, wholesale raids were attempted at one time or another, in which every Chinaman without a registration or other certificate was arbitrarily arrested, though an enormous percentage of Chinese residents (merchants, teachers, students, United States citizens, etc.) are here lawfully without certificates, and though the Government itself for years, under general regulations of the Secretary, illegally impounded section 6 certificates of privileged persons, which the statute provided they might retain for their protection. (*Toy Tong v. United States*, 146 F. R. 343, at 350 C. C. A.) (See further as to this, Mrs. Coolidge's book, pages 323 et seq., and the official protests of the former Chinese ministers to the United States.) I was counsel in a group of New York Chinese deportation cases before United States Commissioner Hitchcock in New York in 1902, where the defendants were all designated merely as "John Doe No. 1," No. 2, etc., but all described as "identifiable by the complaining Chinese inspector." I cross-examined the inspector at the start, and, to the amazement of Commissioner and United States Attorney, brought out the fact that he had no particular persons in mind when he swore out these warrants, alleging illegal presence of the defendants in the United States, and hadn't investigated any of the cases, but had assured Commissioner and United States Attorney directly to the contrary beforehand, as blanket warrants are illegal. My motion to dismiss all the complaints on this preliminary objection, as secured by a gross fraud on the court and misrepresentation, was granted. Later I ascertained from high Government officials that the inspector in charge at the time had offered the United States marshal extra compensation out of his own pocket if he would blindly follow his directions in making the arrests, so great was his personal, secret, interest. Not a single one of the defendants was ever rearrested.

Almost simultaneously a batch of arrests were made by the same inspectors in Brooklyn, and Black, Olcott, Gruber & Bonyng (ex-Governor Black's and ex-District Attorney Olcott's firm) secured

affidavits showing that simultaneously a Chinese Government interpreter of these inspectors advised all the Chinese in the vicinity, to avoid trouble, to buy bogus certificates from him. Upon this evidence the inspector in charge was removed by the Treasury Department, and his junior sent off to an unimportant district in the interior, but reasons of supposed "public policy" prevented their prosecution. This batch included the cases decided in 193 U. S. 65 and 517, in which I specified the facts in my brief. Soon after, similar wholesale raids on substantially all Boston's Chinese residents took place, and they were crowded together into a new "Black Hole of Calcutta" under circumstances graphically described by ex-Secretary of State Foster in the *Atlantic Monthly* for January, 1906. There defendant's counsel were not permitted to go into the irregularities underlying the warrants, and every case had to be tried on its merits, at heavy expense to the defendants. I read a year or two ago, however, that the Chinese inspector responsible for these arrests was at last removed for misconduct. Again and again Chinese inspectors have pretended to be smugglers, brought Chinese persons over the border to friends they inveigled into receiving them, and then arrested the friends and the men they had themselves smuggled over the border. Also note Chief Justice Taft's views, quoted in my article on "Un-American Character of Race Legislation," near the end.

When I was in office a Chinese inspector would arrest sometimes 50 Chinamen at a time, coming down on the New York Central from the Canadian border station, Malone, and claimed his associates up there used to admit them irregularly; he said he wanted to investigate each case carefully himself, after the arrest, before any trial, and ultimately requested the discharge of nearly all the defendants, which was granted. After I was out of office, reputable Chinese persons told me that this interpreter collected so much per head for nearly every man thus discharged. In fact, at the time of registration in 1894, the Government officers reported in writing to their chief that substantially all the Chinese in the United States had registered, but prosecutions have continued merrily ever since, at least till Secretary Straus's day, and the Chinese boycott in reprisal ensued, and the burden of proof was on the defendants, to prove almost impossible matters, often solely by white witnesses, and the courts held that on other points they need not credit the evidence of the Chinese defendants, for instance, that they were sick at the time of registration. In one of these cases a reputable merchant in New York incidentally was deprived of hundreds

of dollars in his store. These are only samples, and involved some of the possible 100,000 Chinese residents of the country, while there are 7,000,000 aliens here that can be similarly treated under the proposed laws.

I find that my collection of citations of references under the alien and sedition laws was contained chiefly in another paper of mine, than the one I cited, entitled "The Right of Asylum, with Particular Reference to the Alien," in the May-June, 1917 issue of the *American Law Review*, page 403. They include Elliott's *Debates* (vol. 4, pp. 528-554); Prof. F. M. Anderson's papers, "Contemporary Opinion on the Virginia and Kentucky Resolutions" (in *Am. Hist. Review*, vol. 5, pp. 45 et seq., 225 et seq.), and his paper, "Enforcement of the Alien and Sedition Laws" (*American Historical Association Reports* for 1912); Ford's *Jefferson's Writings*, VII, 245 et seq., particularly p. 291, note, and Hunt's *Madison's Writings*, VI, 320 et seq. Professor McMaster's able paper, "The Riotous Career of the Know-Nothings," is to be found in his book, "With the Fathers." I have already stated that the alien act of 1798 (June 18, 1798), printed in *Laws of United States, from 1789 to 1815*, Vol. III, (pp. 62-64), and of June 25, 1798 (*Idem.*, pp. 66-68), required all aliens to register. They did this, but the penalty for failure was only \$2; but imprisonment in default of bonding was also authorized; and, besides, masters of ships were required to report particulars about all aliens brought over by them; but, in addition, the President was empowered to order deported arbitrarily any alien he might deem dangerous, and also to have them imprisoned on his warrant meantime. All this is in addition to the act of that year regarding alien enemies, approved July 6, 1798 (*Idem.*, pp. 74-75).

Moreover, if you start in with registration of aliens, it will be only an opening wedge, as President Arthur predicted in 1882, as to the Chinese exclusion law machinery. Under plea of making the law more "effective" and stopping alleged "alien's frauds," a mild law will become a harsh and oppressive one very soon.

Moreover, it seems absurd to have the Labor Department, charged with deportation of aliens, suddenly become our agency for educating and Americanizing the aliens, instead of the United States Commissioner of Education being vested with authority to supplement local State educational agencies, as in the Kenyon bill, which passed the Senate a few years ago. The inadequacy and impropriety of having Americanization work done by the Labor Department was very recently

well emphasized by able and disinterested specialists in two books in the important "Americanization Series," prepared for the Carnegie Corporation of New York, entitled, "Schooling of the Immigrant," edited by F. V. Thompson, and "Americans by Choice," by John P. Gavit. Such men as ex-President Roosevelt, John G. Brooks, Dr. Talcott Williams, and Raymond B. Fosdick were on the committee in charge of the preparation of this series. If any registration should take place for education purposes, the registration certificates should go only to the United States Commissioner of Education, or the various State educational agencies, and there should be no substantial penalty whatever.

But somebody has misled the President, by giving him erroneous and misleading statistics as to the illiteracy here and abroad, in his annual message. His figures startled me, and I looked into them. He refers to "illiteracy estimated at from two-tenths of 1 per cent to less than 2 per cent in 10 of the foremost nations of Europe" in contrast to a "6 per cent illiteracy in the United States." These European statistics are taken, directly or indirectly, from the source employed by the World Almanac of 1922 (p. 724). The low European percentages he named relate to specially selected persons, nearly all males, from marriage records and generally the Army recruiting figures of 1914,—and males show a much higher literacy than females,—and approximately of age, and at a time when pretty high standards of recruiting still prevailed in those countries. Much higher illiteracy than ours, when figured like ours on the basis of illiteracy of persons over 11 years old, prevails in Europe generally, and particularly in such highly civilized countries as France, Belgium, and Austria. On the other hand, his American illiteracy figures (World Almanac, p. 721) embraces all persons over 10 years old, and relate chiefly to the Southern States, the negro illiteracy exceeding the foreign-born totals.

Of course, substantially all the negro illiterates are native-born United States citizens, and therefore beyond the jurisdiction of the Bureau of Naturalization in the Labor Department for educational purposes, as distinguished from the United States Commissioner of Education and the local State educational authorities.

I conclude by reiterating that, however unintended, you are proposing a registration of aliens machinery on the pattern of our Chinese exclusion laws, which will challenge the rights of millions of inoffensive alien residents, cause them to be viewed with suspicion, dislike, and hatred, and in fact, do them no good, but only harm, and expose them

to deportation, and boundless extortion, blackmail, and other injuries. Let us rather remember President Roosevelt's noble words, expressed in his message of 1906: "Not only must we treat all nations fairly, but we must treat with justice and good will all immigrants who come over here under the law. Whether they are Catholics or Protestants, Jews or Gentiles, whether they come from England or Germany, Russia, Japan, or Italy, matters nothing."

A DANGEROUS PROJECT*

Since the companion pamphlet, "THE REGISTRATION OF ALIENS, A DANGEROUS PROJECT," was published (second edition, 1926), no really serious effort to pass a "Registration of Aliens" measure was made until Senator Blease introduced what was really a "voluntary registration of aliens bill" (S. 5093) on December 22, 1928. The purpose of this bill was really to legalize the Department of Labor's attempt through General Order No. 106, effective July 1, 1928, to establish, by executive order, a system of voluntary registration, despite widespread opposition in and out of Congress; the bill introduced by Senator Blease in the present Congress on May 16, 1929 (S. 1278), is practically identical with his earlier measure. In its original form, the Commissioner General of Immigration's order had provided that "the admitted alien should be cautioned to present it [identification card] for inspection if, and when, subsequently requested so to do by an officer of the Immigration Service," clearly indicating that the absence of the certificate therein provided for was to create a presumption against the alleged alien, a purpose carried over into the Blease bill by the phrase: "Such certificate shall be *prima facie evidence* of the lawful admission of such alien." In fact, in published interviews with the Commissioner General of Immigration, it was at first frankly disclosed that non-presentation of such identification card by persons suspected of having entered recently will be treated as raising a presumption of illegal presence here, and Acting Commissioner General Harris stated that "it will save aliens lawfully in the United States time and trouble in establishing their identifying bona fides." This order also provided that, in the event of the alien's arrest, it was to be impounded, thus despoiling him of it illegally at the very time it might be really useful to him (*Toy Tong vs. U. S.* 146 F. R. 343 at 350 C C A). Although in terms limited to issuance to aliens arriving on and after July 1, 1928, it was authoritatively stated that it was planned to issue such certificates generally to all aliens applying for the same, able to establish legal presence here, and it is obvious that if their issuance can be made

* Pamphlet entitled "The Registration of Aliens, Voluntary or Compulsory, a Dangerous Project." (Supplementary Pamphlet), published by the League for American Citizenship, New York, 1930.

general, absence of the same might be regarded as raising a presumption of illegal presence here.

The Secretary of Labor personally, it was conceded, had fathered the project, and the initiated promptly realized that even such departmental voluntary registration scheme could be made the means of wholesale inquisitions, arrests and deportations, as the General Immigration Law authorizes institution of deportation proceedings against alleged aliens, with or without reason, in the discretion of the Secretary or his assistants, in which the burden of proof was on the alleged alien to satisfy the immigration officials of their lawful presence. The "claws" need not be in the registration law or order itself, and it is within the discretion of the Secretary or his assistants to conclude that inability to produce a registration card raises a presumption which justifies institution of deportation proceedings.

The order aroused vehement protests, particularly on the part of the labor unions. A "Labor Letter," published in the *Federated Press* of June 21, 1928, outlining the project, was in fact entitled "Davis Tries Bluffing Aliens Into Blacklist Registration Scheme." In an analysis of the order, Mr. Bruno Lasker, editor of the *Inquiry*, wrote in September, 1928:

"From what danger, exactly, is the immigrant to be protected by means of the identification card? Obviously the order of July 1, since it applies to an even smaller proportion of the foreign-born residents in the United States than the alien registration bill was intended to bring under the scope of its provisions, increases the chance that legally resident aliens will be harassed by zealous officials. The Secretary of Labor and other sponsors of the order reiterate the motive of 'protection,' but have not so far elucidated it. It must be assumed, therefore, that the main purpose of the measure, after all, is that of facilitating the apprehension of those illegally in this country—admittedly a difficult task, and a task which the most 'liberal' immigration policy will want to see more fully accomplished. But I have never been able to see how anything short of a system of registration for the whole population will be really effective. If every man who wears a beard and reads a foreign-language newspaper is to be suspected unless he can produce either an identification paper or a naturalization paper, we shall have more confusion and bungling than ever. It seems to me that by issuing this administrative order after an influential section of public opinion had expressed itself as adverse to the

embodiment of the same idea in a Congressional bill, the Secretary of Labor has invited suspicion as to his motive and apprehension as to the probable working of the measure."

In view of these and numerous other attacks—in the course of which Secretary Davis even wrote to Under Secretary Mills that the holder of such card could destroy it with impunity—the "claws" were ostensibly taken from the order, by omitting the clause as to duty to produce, and it was decided not to issue the certificates without Congressional authorization, except to arriving aliens, landing after July 1, 1928, as to whom a somewhat similar certificate had been authorized by the Naturalization Act of 1906, the so-called "certificate of arrival," used in naturalization proceedings. Meantime, however, the Labor Department's course was vehemently assailed in Congress. Senator Copeland caused a protest against it to be published in the *Congressional Record* of December 6, 1928 (Vol. 70, Part I, pp. 150-2), and on the same day it was vehemently assailed in the House of Representatives (*Idem* pp. 189-190) by Congressman Celler (an able argument by whom, in opposition to Registration of Alien schemes, appears in the pamphlet to which this is a supplement, pp. 88-93, reprinted from the *Congressional Record* of January 7, 1926), La Guardia and Sabath. Congressman La Guardia, lately Republican candidate for Mayor of New York City, referred pointedly to the requirement in the order for the production of the certificate "when requested so to do by an officer of the Immigration Service," in contradiction to the claim that the card was merely "an unofficial identification." Congressman Sabath of Illinois, then ranking Democratic member of the House Committee on Immigration, said that his committee

"had had before it many bills relative to the question of the registration of aliens, but it has always looked with disfavor upon giving them favorable consideration. Therefore I know the members of that committee do not approve of any action on the part of the Secretary of Labor to do something indirectly which he was prevented from doing directly or by law."

It was a few days thereafter that Senator Blease introduced his bill in the Seventieth Congress, and he was careful to give the card a new and apparently innocuous name, calling it "certificate of admission," instead of "registration certificate of aliens."

A few days later, Secretary Davis wrote a letter to the Senate Committee in support of the Blease Bill (*Congressional Record*, Vol. 70, pp. 1117-18), in which all these incidents were ignored, and authority

was asked for the issuance of these certificates, ostensibly for use for purposes of naturalization and to aid aliens in securing employment. Instead of referring in any way to the opposition his executive order had aroused, the certificates were described by him as being clamored for by the aliens themselves! Nobody identified these "certificates of admission" with "registration of alien certificates," and Senator Blease secured a favorable report on his bill from the Senate Committee on Immigration on January 23, 1929, without any public hearing, and it slipped through the Senate the same day without debate (*Congressional Record*, pp. 2091-2). If these facts were known to Senator Blease, they were all omitted from the Report he submitted to the Senate (70th Congress, Second Session, Report No. 1455, January 17, 1929). This is the same measure which he was able, on February 18, 1930, to have reported out by the Senate Committee on Immigration without any formal meeting at which a majority was present (*Congressional Record* for February 18, 1930, pp. 3996, 4027-8), but which was recommitted by the Senate itself to the Senate Committee the same day at the instance of Senators Copeland and Wagner, Senator Hiram Johnson (the Chairman of the Senate Committee) explaining that he had said to Senator Blease

"that I was doubtful about the bill, but, it being a bill that was voluntary in reference to registration, perhaps it was of a different character from a provision for compulsory registration" (*Idem* p. 4028).

In fact, Secretary Davis' statement that the certificates even under his regulations, are purely voluntary, and might with impunity be destroyed, was scarcely made, when his own Naturalization Bureau required their production in its forms for first and second papers, (and non-production by the applicant naturally raises serious questions as to his identity with the person admitted into the country, as also to other prejudicial circumstances). So much for the value of such assertions, even by the Secretary of Labor, forgotten by his subordinates immediately after they were made!

Two other avowed registration bills have been introduced at the present session of Congress, one by Congressman John L. Cable of Ohio, and the other by Congressman J. B. Aswell of Louisiana. The Cable Bill (House of Representatives, 9147), introduced on January 25, is very insidious, unlike the Johnson Bill of 1922 (H. R. 10860), which fairly bristled with penalties for the alien. All the provisions that were, in previously proposed measures, obviously abhorrent to

thinking and liberty-loving Americans, are absent here. Thus, while aliens are required to register every year, as in other Registration Bills (or as the Cable Bill expresses it euphemistically, "enroll annually"), the fee is to be negligible, the penalty for failure to register even less, and there is not the slightest hint of espionage or deportation, threats all too apparent in former Registration Bills. In these respects, the Cable Bill resembles the Blease Bill, above considered.

This "pussyfooting" may well deceive the unwary, but in the seemingly tame Cable Bill there lurks the basic danger inherent in every alien registration project, bare and bold of purpose or disarmingly swathed in soft verbiage. It infringes on the human rights of the alien, would greatly promote deportation proceedings of non-holders under the general immigration law, and is an entering wedge for later measures that would expressly require autocratic and bureaucratic surveillance of every alien resident, and drag into the net also Americans native or naturalized. The Cable Bill, for all its mildness, is no less a menace to the principle of inviolate personal liberty guaranteed to every resident by the Declaration of Independence and fundamental American principles.

The Aswell Bill runs truer to type. According to this measure, an immigrant would have to pay \$100 fine or go to jail for sixty days, or both, if he failed to register annually. If he did not register for two years in succession, he would be deported. The Cable Bill permits the alien to become a citizen after three years of consecutive registration even if he has been delinquent in enrolling during the first five years of his stay here, provided he is otherwise eligible. So much for the avowed penalties. The relation of the bills to the general deportation provisions has already been outlined.

Much support has been afforded to registration bills during the past few weeks by the report that the plan is now favored by the American Federation of Labor, which was until lately the most uncompromising opponent of such expedients, as is shown by the public utterances of the late Samuel Gompers, and by his successor, President William Green. In fact, it has been urged by proponents of the plan that these bills can be utilized, if enacted into law, to effect the deportation of so many thousands of persons alleged to be here illegally, as to relieve the unemployment situation. These reports, as concerns the American Federation of Labor, seem to be unfounded, however. In the *Jewish Daily Bulletin* of February 17, 1930, the following interview with Mr. Green appeared:

GREEN DENIES A. F. OF L.'S NATIONAL COUNCIL

APPROVED ALIEN REGISTRATION BILL

The American Federation of Labor does not contemplate having introduced or supporting any bill for the compulsory registration of all aliens, declared William Green, president of the American Federation of Labor, in an exclusive interview with the Jewish Telegraphic Agency. Mr. Green emphatically denied the story that the National Council of the American Federation of Labor at its last session in St. Petersburg, Florida, adopted a resolution favoring the introduction of a bill calling for compulsory registration of aliens.

"The National Council of the A. F. of L. could not have adopted such a resolution because the question was not even considered at its last session," Mr. Green declared. "It is true that the National Convention of the American Federation of Labor held in Toronto in November took up the question of the registration of aliens, but this was meant as voluntary registration only.

"It was understood that this measure should be more of a protection for those aliens who are here legally, who, by obtaining a registration card would be able to identify themselves in case it was necessary. However, those who already have certain documents which identify their legal entry into the United States should not need to apply for special registration cards. That makes it clear that we are for voluntary registration of aliens only, and all current reports to the contrary are therefore unfounded," Mr. Green said.

When asked whether the American Federation of Labor plans to have introduced or to support any compulsory registration bill, he emphatically said, "We do not contemplate doing so."

Still more recently, the leading spokesman of the American Federation of Labor, Edward McGrady, telegraphed:

"American Federation of Labor is opposed to compulsory registration. Also opposed to any yearly registration. This smacks too much of European espionage."

Obviously, the dangers herein pointed out, as to the opportunity to institute deportation proceedings under the general immigration law (which Samuel Gompers never forgot) was overlooked by some bitterly opposed to compulsory registration.

A registration system, even if voluntary, will, first of all, give the Government at once an opportunity to elicit information from thousands

of innocent applicants, whose deportation will directly follow. Next, we have the circumstance that, if registration becomes general—even through statutes or orders for voluntary registration—the inability to produce a registration certificate will give rise to some kind of an inference or suspicion of illegal presence, which the immigration authorities are likely to invoke as a justification for starting deportation proceedings, under the general immigration law, in which the burden of proof is on the alien or alleged alien, and which will be attended by almost incredible hardship for him. Those not required to register were, in fact, the chief victims of the Chinese Registration laws. It will be a simple matter for the immigration authorities to promulgate anew an order—such as that known as Order No. 106, above referred to, before its modification—requiring all alleged aliens to produce their certificates, and authorizing arrest in deportation proceedings where they are not forthcoming. Moreover, a voluntary registration system would be but an opening wedge for a compulsory one, which “efficiency” will promptly demand. But the fundamental, American objection should not be lost sight of: every alleged alien in the country would thereby be made an object of suspicion and investigation!

This is not the place to enlarge on the brutalities, oppression, crimes, extortion and corruption which would be certain to attend a registration of alien system, in the light of our experience under the Chinese Exclusion Laws, but with millions, instead of less than 100,000 potential victims. These were enlarged upon in my earlier pamphlet, by leaders of public opinion of every creed and race, and are ably outlined in a very valuable symposium recently published by the New York Jewish daily, *The Day*, both in its newspaper issues and pamphlet reprint, which brings the matter down to date. Through the courtesy of *The Day* these statements, laboriously, patriotically and intelligently gathered by it, are reprinted herein.

UNITED STATES LEGISLATORS AGAINST THE PLAN

SENATOR ROBERT F. WAGNER

New York, Democrat

I am unalterably opposed to legislation which sets the immigrant apart to be specially registered, identified, numbered and watched. Such tactics interfere with genuine Americanization. The proposal is based on the narrow and provincial idea that every immigrant must be viewed with suspicion. I regard the immigrant as a potential citizen to be encouraged and treated with sympathy and consideration.

Special registration and the required possession of identifying documents for alien immigrants will serve no useful purpose, will of necessity require similar identification for all citizens and will create another organization of federal agents. The scheme would impose a degree of regimentation by the federal government of the inhabitants of the several states which we have heretofore considered intolerable and unthinkable.

SENATOR ROYAL S. COPELAND

*New York, Democratic Member of the Senate
Immigration Committee*

I have always been and still am emphatically opposed to any form of compulsory alien registration. I can see no sufficient reason, considering the serious and insuperable objections to this plan, why it should be adopted. As to the recent endorsement of the idea by the executive committee of the American Federation of Labor, I am inclined to believe this action was caused by their impression of an influx of illegal immigration of Mexicans across the American border, rather than any feeling that such a large number of European aliens has entered unlawfully as to justify such a dangerous measure.

SENATOR ROBERT M. LAFOLLETTE

Wisconsin, Progressive Republican

I am unalterably opposed to the compulsory registration of aliens; such a system would put aliens under the onus of reporting to officials and carrying registration cards. I see no justification for this proposal. I have steadfastly supported restriction of immigration and I am in favor of strict enforcement of immigration laws, but I do not believe the registration plan is necessary.

I think unlawful entry should be checked at the source. The remedy lies at the point of entry and not after the aliens have succeeded in effecting entry. To attempt a wholesale method of ferreting out aliens in the United States who entered unlawfully is a hopeless task, and would involve more mischief than any good that might come of it. The registration plan involves a spy system. It designates the alien for supervision by a bureaucracy and exposes him to humiliation, which would be most harmful to our efforts for a better understanding between the alien and the native.

Every alien is a prospective citizen. Prospective citizens should be encouraged and made to feel at home, and not placed under special restrictions which put them in a difficult position. I shall certainly

vigorously oppose the registration of aliens if the plan comes up in Congress.

SENATOR GEORGE W. NORRIS

Nebraska, Progressive Republican

I have not had occasion to study the question of compulsory registrations of aliens and consequently am not in a position to say very much on the subject. My first impulse, however, is that there is absolutely no necessity for such an extreme and drastic system. Involving as it does a spy system and prying into people's private affairs, it is repugnant to the fundamental principles of Americanism. I do not think that the problem created by aliens who entered the United States unlawfully is sufficient reason to attempt such a mischievous plan.

SENATOR WILLIAM H. KING

*Utah, Ranking Democratic Member of the Senate
Immigration Committee*

I have not up to the present time favored the proposition of compulsory registration of aliens, despite the object it has in view, of deporting aliens who entered unlawfully. My attitude is based on the obvious possibilities of abuse inherent in the plan. I shall of course consider very carefully any scheme of compulsory alien registration which might be brought up, but my feeling is against the idea, generally.

SENATOR GERALD P. NYE

*North Dakota, Member Senate Immigration Committee,
Progressive Republican, and Leader of the Fight Against
the "National Origins" Plan*

I have not given the subject much study. I favor the ferreting out of all illegally entering aliens, but if we propose to adopt a law which would entail objections far outweighing the beneficial purpose sought, I would oppose it. Our experience along the lines of legislation involving the possibility of an espionage system demonstrates the advisability of leaving well enough alone, if we could not guard against the evil possibilities inherent in such a system.

SENATOR JAMES E. WATSON

Indiana, Republican Majority Leader of the Senate

Secretary of Labor Davis and myself may be considered joint originators of the compulsory registration plan. It was first brought forward by us at the 1920 Republican Convention. We certainly meant no harm to any class of our population in proposing the idea, feeling it

was necessary because the presence of such a large mass of aliens in the United States of whom we have no record, creates a peculiar problem with which the government is bound to concern itself, and we felt the registration plan offered a satisfactory solution of the problem. However, the plan met with such great opposition that more recently Secretary Davis has ceased to press it. I also have taken no active interest in the idea lately, in view of the strong feeling against it. I realize the difficulties involved. Since the entire question has quieted down, I doubt the advisability of renewing agitation against it, even though it has again been suggested by the American Federation of Labor.

REP. SAMUEL DICKSTEIN

New York, Member House Immigration Committee

The Cable Bill, H. R. 9147, is another attempt to bring to the attention of Congress another measure to register aliens. This is perhaps the fifth or sixth time that bills of this kind have come up in Congress, always to be discredited by the membership.

This bill as introduced is general in its provisions and provides no penalties for non-compliance. Nevertheless, it is an attempt for an opening wedge to compel registration of aliens, with the idea of scaring them into a sort of espionage system, like that prevailing in Russia of the Czars.

If this bill passes, pretty soon new bills will be added, making registration compulsory and in the course of time every alien, or any person suspected of being an alien who will not be able to show a certificate of registration, will be hounded from his place of employment, dragged to jail and ultimately deported out of the United States.

I believe that the passage of this bill will result in a great deal of chicanery by paid officials and will not accomplish any desirable purposes.

I believe that if we are to prevent unlawful admission of aliens, it is up to us to strengthen the Board of Patrol and make efficient examinations at our Ports of Entry.

If we enforce the existing immigration laws, there is no need for any registration of aliens.

REP. J. WILL TAYLOR

Tennessee, Republican Member Next in Seniority to the Chairman of the House Immigration Committee

As a general proposition I have been inclined to favor any practicable plan of registering aliens, for the purpose of detecting those

aliens who entered the United States illegally. I am in sympathy with such legislation. However, I am aware of the possibility of abuses under such a plan, and this aspect of the matter demands careful consideration before any action is taken. Personally, I regard this question of possible abuses as so serious, that although I would like to see a registration plan put into effect, I would not support it unless the plan embraced satisfactory provision guaranteeing against such abuses.

REP. JOHN Q. TILSON

Connecticut, Republican Majority Leader of the House

My attitude toward legislation of this type has always been very conservative. Such legislation involves numerous ramifications and possible dangers. There is a possibility of hardship and embarrassment to innocent people, including naturalized American citizens. Legislation of this type should not be entered into lightly or hastily. It must be very carefully weighed before any drastic law having this objective is adopted. I would not give my support to such legislation unless I were first convinced that the plan is free from serious objection.

TEXT OF THE THREE BILLS FOR ALIEN REGISTRATION PENDING IN CONGRESS

1. THE BLEASE BILL S. 1278

71ST CONGRESS, 1ST SESSION
IN THE SENATE OF THE UNITED STATES

May 16 (calendar day May 25), 1929

MR. BLEASE introduced the following bill; which was read twice and referred to the Committee on Immigration.

A BILL

To authorize the issuance of certificates of admission to aliens, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an alien who has been lawfully admitted to the United States for permanent residence and who has continued to reside therein since such admission shall, upon his application to the Commissioner General of Immigration, in a manner to be by regulation prescribed, with the approval of the Secretary of Labor, be furnished with a certificate made from the official record of such admission. Such certificate shall be signed by

the Commissioner General of Immigration and shall contain the following information concerning such alien: Full name under which admitted; country of birth; date of birth; nationality; color of eyes; port at which admitted; name of steamship, if any; and date of admission. Such certificate shall also contain the full name by which the alien is then known, his signature, and his address. A photograph of the alien shall be securely attached to the certificate, which shall bear an impression of the seal of the Department of Labor.

SEC. 2. Such certificate shall be prima facie evidence of the lawful admission of such alien. A fee of \$3 shall be paid by such alien to the Commissioner General of Immigration for each such certificate. The money so received by the Commissioner General of Immigration shall be paid over to the disbursing clerk of the Department of Labor, who shall thereupon deposit it in the Treasury of the United States, rendering an account therefor quarterly to the General Accounting Office, and the said disbursing clerk shall be held responsible under his bond for such fees.

SEC. 3. This Act shall take effect January 1, 1930.

II. THE CABLE BILL

H. R. 9147

71ST CONGRESS, 2ND SESSION
IN THE HOUSE OF REPRESENTATIVES
JANUARY 25, 1930

MR. CABLE introduced the following bill; which was referred to the Committee on Immigration and Naturalization and ordered to be printed.

A BILL

To provide for the registration of aliens and to amend and supplement naturalization laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of June 29, 1906 (Thirty-fourth Statutes, page 496; United States Code, title 8, section 106), is hereby amended by adding at the end thereof the following:

“Any alien so arriving and registered, or who has been or may hereafter be registered under the provisions of this section or section 1 of the Act of March 2, 1929 (Forty-fifth Statutes, page 1516; United States Code, Supplement 3, title 8), who has not received the certi-

ficate of registry required by such section 1 of the Act of June 29, 1906, shall apply to and receive from the Commissioner of Naturalization a certificate of registry with photograph attached, furnished in duplicate by the applicant. Such certificate shall be applied for and obtained within six months after the passage of this Act and shall be renewed annually thereafter by the alien under regulations prescribed by the Commissioner of Naturalization and approved by the Secretary of Labor.

"Every alien lawfully admitted into the United States for permanent residence shall enroll annually and receive a certificate of such enrollment. Aliens under the age of twenty-one years shall be registered by their father, mother, or guardian. No fee shall be charged if such aliens are not gainfully employed.

"This Act shall include aliens in Hawaii, Porto Rico, and the Virgin Islands.

"Duly accredited diplomatic or consular officers of any foreign government, members of the family of such officer, and those in their employ shall not be subject to the requirements of such registration or enrollment.

"Any alien eligible to citizenship who has registered and enrolled in accordance with this section for a period of five consecutive years may petition for citizenship without any previous declaration of intention, and upon compliance with all other requirements of the naturalization laws, may be admitted to citizenship. There shall be paid to the Commissioner of Naturalization a fee of \$1 by each alien required by section 1 of this Act to register, and a fee of 50 cents for each enrollment and certificate thereof, and a fee of \$1 for each new certificate of registry or certificate of enrollment in lieu of one lost, destroyed, or mutilated. The fee for registration shall be \$2 and the fee shall be \$1 for each year of failure by alien to register or enroll, in each case where an alien is required to register by section 1 of this Act fails to register and thereafter fails to enroll annually. Any alien who fails to register and thereafter fails to enroll as required by section 1 of this Act shall be excluded from citizenship until registration and enrollment shall thereafter have occurred for three consecutive years. The Commissioner of Naturalization may, with the approval of the Secretary of Labor, exempt any alien from the payment of any fees prescribed by this Act upon proof that such payment would work a hardship because of sickness, unemployment or other causes."

SEC. 2. In the case of each immigrant arriving in the United States, from and after six months from the date of this Act, such certificate of registry required by section 1 of the Act of June 29, 1906 (Thirty-fourth Statutes, page 596; United States Code, title 8, section 106), as amended, issued at the port of entry to each immigrant entering the United States shall be issued under regulations prescribed by the Commissioner General of Immigration, approved by the Secretary of Labor.

III. THE ASWELL BILL

H. R. 9101

71ST CONGRESS, 2ND SESSION
IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 1930

MR. ASWELL introduced the following bill; which was referred to the Committee on Immigration and Naturalization and ordered to be printed.

A BILL

To provide for the registration of aliens, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That as used in this Act—

(a) The term "United States" includes all territory, waters, and other places subject to the jurisdiction of the United States;

(b) The term "regulation" means a regulation made as provided in section 11 of this Act;

(c) The term "alien" includes any individual in the United States, Alaska, Hawaii, Porto Rico, and the Virgin Islands, not native-born therein or not a naturalized citizen of the United States, but shall not be held to include the citizens or the aliens of the other islands under the jurisdiction of the United States, or the duly accredited diplomatic or consular officers of any foreign government, those in their employ, or members of the family of such officer.

SEC. 2. Every alien in the United States shall, within the time fixed by the President in a proclamation made by him within ninety days after the enactment of this Act, enroll or register at such time and place as may be fixed by regulation. On or after the first day of registration as fixed in such proclamation, every alien, before being admitted into the United States for temporary stay or permanent residence on original admission, and upon reentry, if not previously registered in accordance with this Act, shall be registered in like

manner by immigration officials at the port of entry, and such registry shall be a condition attached to such admission or reentry.

Every such alien twenty-one years of age or over shall register in person unless actually prevented by physical or mental inability, confinement in a prison, asylum, or other institution, temporary absence from the country, or other good cause, in the discretion of the Secretary of Labor, in which case the registration shall be in the manner provided by regulation. Every alien under twenty-one years of age shall be registered by a parent or guardian and without payment of the prescribed fee, but shall register in person immediately upon reaching the age of twenty-one years. Neither a failure to register nor conviction therefor shall affect the continuance of the duty to register or inability for violation of such duty.

SEC. 3. Every such alien in the United States, whether temporarily or permanently admitted thereto, shall be subject to registration as provided in this Act and shall register once each calendar year. The period during the calendar year for such registrations shall be prescribed by regulation except that the first required registration of any alien at the time of admission into the United States, if within six months next preceding such period in any calendar year, shall be in lieu of registration during such year.

SEC. 4. At the time of the first registration of each alien as required by this Act, after registration upon admission into the United States, who has reached the age of twenty-one years, the alien shall pay to the registering officer a fee of \$2 and shall pay at each subsequent registration a fee of \$1. Such payment shall in each case be made by postal money order payable to the Commissioner of Naturalization.

SEC. 5. A certificate of registry shall be given to each alien at the time of registration who is twenty-one years of age or over. Such certificate shall contain a photograph of the registrant furnished by the alien, and be in such form as shall by regulation be prescribed. Any registered alien who is under the age of twenty-one years may receive a certificate of registry with photograph attached furnished by the alien, upon application therefor in accordance with prescribed regulations, when such application is approved by the Secretary. In case of the loss of a certificate it shall be held as void and a new certificate may be issued upon application to the Commissioner of Naturalization and payment of a fee of \$2, in the manner prescribed for the registration fee, and under such conditions and restrictions as may be provided by regulation.

SEC. 6. Each record of registration and certificate of registry shall be in duplicate and contain: The full and correct name and all other names by which such person has at any time been known either in the United States or elsewhere, the signature or mark of such person, and such other information as may be by regulation prescribed.

Every alien shall report all arrests or convictions of such alien and the charges upon which such arrests were made or convictions obtained, together with the final disposition of each case, and any other information, as specified by regulation, bearing upon the fitness of such alien for citizenship. A full record shall be made thereof on the original and duplicate records of registration.

Records of all reports required to be made under this Act shall be in duplicate, and if directly relating to any record of registration already made shall be entered thereon in original and duplicate, and also, if required by regulation, upon the certificate of registry.

An affidavit of the truth of the information given for registration shall be made and subscribed with the signature or mark of the alien registered, which affidavit shall be placed with the record of registration in the Bureau of Naturalization. In the case of aliens under the age of twenty-one years, the affidavit may be made by the parent or guardian.

SEC. 7. The original record of registration of each alien and the duplicate certificate of registry shall be filed in the Bureau of Naturalization. The duplicate record shall be retained and filed in the central office of the district in which the registration is made.

SEC. 8. The record of registration and the certificate of registry of each alien shall have the same serial number. If a new certificate of registry shall be issued, the records and the certificate shall receive a new serial number, and the original shall be canceled.

SEC. 9. Whenever the name of any alien is changed, whether by marriage or by legal proceedings or otherwise, such alien shall immediately report such fact to the Commissioner of Naturalization, and whenever the physical appearance of an alien registered under this Act is changed materially, such alien shall report such fact to the Commissioner of Naturalization, whereupon the appropriate changes shall be made in the records of registration and the certificate of registry, or new records may be made, and a new certificate issued.

SEC. 10. Whenever, in the judgment of the President, the interests of the national defense so require, he may, by proclamation, require all or any part of the aliens required to be registered by this Act to report at such times and places as he shall fix.

SEC. 11. The Commissioner of Naturalization shall be charged with the duty of the proper enforcement of this Act, under the direction of the Secretary of Labor, and shall, with the approval of the Secretary of Labor, make all regulations necessary to its enforcement.

The Secretary of Labor may appoint such assistants for the purpose of enforcing this Act as may from time to time be authorized by appropriations.

SEC. 12. Every alien eligible to citizenship who has (1) reached the age of twenty-one years, (2) been registered in accordance with this Act for a period of five years immediately preceding his application for citizenship, (3) demonstrated his ability before a naturalization examiner to read, write, and speak the English language understandingly (unless physically unable to do so), and (4) in all other respects complied with all the provisions of the naturalization laws, may petition for citizenship without any previous declaration of intention, and, upon compliance with all other provisions of the naturalization laws, may, if found qualified, be admitted to citizenship.

SEC. 13. Every alien shall, on demand, at any time exhibit his certificate of registry to any agent of the Department of Labor, to any Federal, State, Territorial, or other public police or peace officer.

SEC. 14. Upon departing from the United States an alien shall surrender his certificate to the immigration officials at the point of departure. At the time an alien applies for citizenship the certificate of registry shall accompany the application to the Commissioner of Naturalization. Every certificate of registry which is surrendered under this section shall be void for all purposes.

SEC. 15. The Secretary of Labor shall request the governor of each State to submit a concise synopsis of the resources of his State and the opportunities open to immigrants in such State and shall at stated times further request the governor, but not more frequently than semi-annually, to submit estimates of the number and type of immigrants that are deemed desirable as residents of such State. The Secretary of Labor shall compile from such reports and furnish the Secretary of State information and statements from time to time (in such languages as the Secretary of Labor shall deem expedient) setting out conditions and opportunities in the several States, for furnishing to American consular officers. Each alien applying to any such officer for a visa shall be given the opportunity of reading such statements and shall select the place in the United States to which such alien desires to go, which place shall be named in the visa. No alien entering the United States

after six months following the enactment of this Act shall be deemed to have completed his temporary or permanent admission into the United States or his registration under this Act until he has, as prescribed by regulations, reported at the place named in his visa at the office in the district in which such place is located.

SEC. 16. Whoever (a) violates any provision of section 2, 3, 6, 9, 13, or 14 of this Act, or (b) fails to report as required by a proclamation made under section 2 is guilty of a misdemeanor punishable upon conviction by a fine of not more than \$100 or by imprisonment for not more than sixty days, or by both such fine and imprisonment; and whoever (a) violates any other provision of this Act or of any provision of any regulation made pursuant to this Act, (b) makes any willful false statement or misrepresentation in any act or thing required to be done by this Act or by any regulation made pursuant to this Act, or in relation thereto, or (c) counterfeits or for unlawful purposes mutilates or, except in the course of his duties under this Act, willfully alters or willfully destroys any record of registration or certificate of registry issued under this Act is guilty of a felony punishable upon conviction by a fine of not more than \$5,000, or by imprisonment for not more than two years, or by both such fine and imprisonment. Each failure to make any report required under this Act shall constitute a separate offense.

Any alien who willfully fails or neglects or refuses to register for two consecutive years under the provisions of this Act may be taken into custody on warrant of the Secretary of Labor and deported.

SEC. 17. All fees required to be paid, under the provisions of this Act, by aliens to the registering officer shall be transmitted to the Commissioner of Naturalization in accordance with regulations. The Commissioner of Naturalization shall receive all fees required to be collected under the provisions of this Act, and shall pay over and deposit them in the Treasury and account for them to the General Accounting Office in the same manner as required of naturalization fees received by the Commissioner of Naturalization.

SEC. 18. For the remainder of the fiscal year ending June 30, 1930, and the fiscal year ending June 30, 1931, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$1,500,000 for the purpose of defraying the expenses of the enforcement of this Act, to be expended by the Commissioner of Naturalization under the direction of the Secretary of Labor.

STATEMENTS BY LEADING AMERICANS

HON. HERBERT H. LEHMAN

Lieutenant Governor, State of New York

The proposed plan to require compulsory registration of all aliens in the United States must be abhorrent to all fair-minded and thinking people. I am thoroughly opposed to any such scheme. It would immediately set apart our alien population and place a stigma on them. It would foster and develop in a marked degree class and racial discrimination.

It seems to me the important task to which we should set ourselves is to absorb as promptly as possible our alien population, and not to cause further cleavage and thus handicap the progress of Americanization. It is un-American to discriminate against any class of its population and that is exactly what compulsory registration would do.

Furthermore, it would open the way to possible abuse by unscrupulous police officers and other authorities in an intolerable degree. I do not know of any scheme more un-American in its conception, principle or operation. If as has been represented, the purpose is to stop criminal aliens from coming into our country, it would not serve its purpose.

It would subject countless thousands of our law-abiding, self-respecting men and women, most of whom are prospective citizens, to injustice, oppression and discrimination, when the alleged purpose could be far more readily secured in other ways.

It should not be difficult for the Federal Government so to strengthen our immigration service, both here and abroad, that the alien criminal can be detected and excluded from this country. It certainly should not be necessary in order to do this to label and set aside from their fellows the many law-abiding, honest aliens who have come to this country for the purpose of making their homes and becoming a part of their new country.

HON. JAMES J. WALKER

Mayor of the City of New York

I consider the proposal to register all aliens in the United States injurious and un-American. To force a man to go to the polls at stipulated times to register, is to place him in the category of criminals. The immigrant population of the United States is a law-abiding body, and anything that might reflect on its fair name is a travesty of justice.

It is un-American, I believe, to discriminate against a class as a whole. To force all aliens to carry passports with them—and that is

exactly what the registration scheme would allow—is to discriminate against every alien, no matter how high his intellectual attainments, or how honest his intention to become a citizen of the United States. It is an old established American principle that a man is judged by his own merits, and not by the class or the group in which he happens to have been born. The subjection of all aliens to what would amount practically to police surveillance is uncalled for.

I am also opposed to the proposed Registration Law because it would inevitably tend to interfere with the inalienable right of personal liberty. Under the provisions of the Registration Law, every alien, and for that matter every American who might be taken for an alien, could be stopped by a policeman and asked to produce his registration card. This would give the police officer more power than he should have over the ordinary man in the street. America was always averse to a passport system within the country. We have always refused to fingerprint and label the whole population. This we left to autocratic governments.

Nor am I convinced that even should we adopt the registration plan, that the purpose of the whole scheme would be attained. The proponents of the plan imagine that all that is necessary to catch the immigrant criminal is to put on the statute books a requirement for the registration of all aliens. The criminal, whether he be an alien or a citizen, has at his disposal any number of ways of dodging the laws, including the Registration Law. What will deter him is energetic police action and the swift course of the law.

If we want to stop criminal aliens from coming into the land, let us strengthen our immigration service and our frontier guard, but let us not impugn the faith of all aliens who come to the United States.

DR. FREDERICK T. ROBINSON

President of the College of the City of New York

One of the finest evidences of American liberty is our freedom from official surveillance. In contrast with European countries, people within our borders may go from place to place without registering with any official, without passports and credentials, and without police control. When a foreigner meets our proper entrance requirements he is made to feel at home and should be as free in his movements and as independent of official control as any native or naturalized citizen. The stranger within our gates is a welcome guest. This American policy should be preserved and not modified at all, save in time of national danger. It is an ideal peace-time policy, which makes for freedom

from suspicion and espionage. It is a policy particularly calculated to protect aliens for future citizenship and the responsibilities which grow with such citizenship. Any curtailment of this freedom would be counter to the American spirit and furthermore, any attempt to enforce a modification would be ineffective.

Therefore I believe it would be both unwise and improperly expensive to set up the elaborate machinery which would be necessary to carry out the proposal in the bill.

NORMAN THOMAS

Leader of the Socialist Party

The law to register aliens is in itself and in its psychological effects a very dangerous law to one believing that real freedom is left in the United States. It is a tragedy that descendants of men who left Europe to avoid such demeaning personal control, should force it upon later comers. Inevitably, alien registration will be used by employers to preserve a blacklist, and by bureaucrats and petty pirates to check up on unpopular aliens. It will engender a fear in the minds of aliens even more disastrous than the actual control. It is nonsense to believe that this method of keeping tabs on aliens will stop with aliens. The next step will be a registration of workers in general. The time to fight such a flagrant curtailing of personal liberty is now, before it has grown greater.

I do not believe that any registration law can pass. The tragedy of it is that it will not be defeated as in former times, by the opposition of the American Federation of Labor. The labor hierarchy, which I hope in this matter is out of touch with its own rank and file, has seen fit to give this measure its support. The argument is that alien registration is necessary to curb bootleg immigration. Secretary Davis has even piously suggested that under it the good immigrant can be helped, which is, whether he so intended or not, a piece of pious hypocrisy.

If to curb bootleg immigration we have to imitate the Czar of Russia, we had better begin to inquire whether our immigration policy is right. We are paying high prices for it, and any set of labor leaders which will consent to pay such a price, shows itself bankrupt of the ideals of the spirit necessary to make the working class movement an assertion of a fellowship of free men. It plays into the hands of those who would reduce our workers to the status of human paradoxes or wage slaves in the most vital sense of that term.

DR. CYRUS ADLER

President, The American Jewish Committee

The American Jewish Committee has always opposed the enactment of any law to require the registration of aliens. The practical effect of such a law would be to introduce in the United States a bureaucratic system of government surveillance, conducive to oppression and extortion, and abhorrent to the principle of personal liberty upon which the Republic has hitherto rested. The enforcement of such a law would require an army of federal officers who will be subject to the same dangers of corruption and special influence as characterize similar systems in Europe. The proposed laws require the payment of registration fees which are an additional burden upon immigrants, each of whom is already charged a head tax of \$8 to enter the country.

The fathers of the Republic were all opposed to the alien and sedition laws which embody the system of registration surveillance, as being in conflict with the spirit and ideals of American liberty. Furthermore, the next logical step after the registration of aliens would be the compulsory registration of all citizens, without which the registration of aliens cannot be enforced. Finally, if the funds required to carry out the proposed measures for registration were applied to improving the policing of our borders, the illegal entry of aliens, which the registration bills aim to detect, would be so greatly reduced as to make such measures wholly unnecessary.

MAX J. KOHLER

*Chairman of the Committee on Immigration of the American Jewish Committee
and of the Baron de Hirsch Fund*

I am vehemently opposed to registration of alien schemes, whether voluntary or involuntary. Their prime purpose is to aid in wholesale fashion schemes for deporting aliens, and afford a justification for an inquisition into the right of every alien or alleged alien, to remain in the United States. The law throws the burden of proof in deportation proceedings on the alien, to show by persuasive evidence his right to remain here, and absence of a registration certificate would become a justification for arrest, imprisonment and deportation. During the last fiscal year, an army of 12,908 aliens were deported by the government, but such legislative sanction would enormously increase the number per annum, perhaps twenty fold. When penalties for non-registration are imposed, the resulting situation of course becomes even more aggravated than where a voluntary system is established, but

both methods are vicious and inhumane, and a voluntary system would soon be transformed into a compulsory one.

Persons not registering, because really not required to register, would be the chief victims, because of difficulty satisfactorily to establish their exemption, but many thousands would, in good faith, through accident or oversight, neglect to register, and be visited with all these penalties. Especially now, when "registry of aliens" who entered before June 1, 1921, for whom no record of admission exists, was just authorized by Congress, such general registration is most uncalled for and unjust. I have been intimately acquainted, since I served as Assistant U. S. District Attorney in New York between 1894 and 1898,—with the brutalities, hardships, injustice and corruption which resulted from our Chinese Exclusion Laws, which I then had charge of, and this is simply an attempt to introduce such a vicious and inhuman system among all residents of all colors. In the pamphlet I edited a few years ago, entitled "The Registration of Aliens a Dangerous Project," the views of leaders of public opinion like ex-Secretary Oscar S. Straus, Alfred E. Smith, Samuel Gompers, Louis Marshall, Walter Lippman, Rev. Charles K. Gilbert, Sherwood Eddy, Judge Augustus N. Hand, Rev. K. D. Miller, and others, vigorously in opposition, were collated. Besides other objections, every alleged alien in the country would thereby be made an object of suspicion and investigation.

DR. STEPHEN S. WISE

President, American Jewish Congress

It seems little less than incredible that the American Federation of Labor should, by its Executive Council, go on record in support of the registration of aliens. This proposal ought never to have support from any forward-looking group in America. It is nothing more than another hysterical post-war psychosis measure. In truth, it is another method of retarding the processes of Americanization. It places every newcomer to our country in the position of suspect. It more definitely and rigidly establishes the caste of aliens, when, in truth, the business of America is to convert aliens through understanding and hospitality into American citizens, and not hold them at arms' length through the stratifying processes of registration.

I cannot believe that the proposal to register aliens, in all its offensiveness, will receive serious consideration in the houses of Congress, but I grieve as a friend of the American Federation of Labor to think that it should give its endorsement to a proposal, unjust and un-American.

BERNARD G. RICHARDS

Executive Director, American Jewish Congress

The proposed plan of Alien Registration which presages nothing less than a system of compelling everyone to carry a passport and of introducing the outworn and discredited practices of espionage has been brought forward on a number of previous occasions and every time it was vigorously condemned by enlightened and forward-looking men and women of all races and religious groups. Many men throughout the country have been heard in condemnation of such a system. At the conference held in New York on January 9, 1926, the voices of Governor Alfred E. Smith, Federal Judge Augustus N. Hand, Mr. Sherwood Eddy, Senator Royal S. Copeland, the late Hon. Oscar S. Straus, Rev. Charles K. Gilbert, and many others spoke clearly and emphatically against this proposal. Mr. Walter Lippman, chief editorial writer of the *New York World* in a most illuminating address, described the measure which was then pending as a "burdensome, meddling and un-enforceable law."

That the American Federation of Labor should now be sponsoring a proposal which strikes at the very basis of personal freedom in the United States and opens many doors for abuses of the law, is astonishing, not only because of the reactionary character of the legislation in question, but of the fact that the new attitude of President William Green and his associates of the Executive Council represents a complete reversal of the former attitude of the Federation. In a report of the Executive Council presented to the Convention of the Federation held in Atlantic City on Oct. 5th to 16th, 1925, reference was made in no uncertain terms to

"A bill for the registration and fingerprinting of the 8,000,000 aliens now in the United States and all who come hereafter was introduced in the last session of the sixty-eighth Congress by Representative Aswell of Louisiana."

After describing the bill in all its objectionable aspects, the report concluded by saying:

"It is inconceivable that the American Congress will seriously consider legalizing an elaborate system of espionage, such as this measure contemplates; nevertheless we earnestly urge upon the Executive Council a continuation of its opposition, so that this dangerous proposition, anti-union and anti-American in principle, will not be written into law."

Needless to say, this report of the Council was unanimously adopted by the delegates in convention assembled.

Mr. Green's predecessor, the late Mr. Samuel Gompers, whom the Federation never ceases to extol and to honor, then writing on the subject to Mr. Max J. Kohler, said

"The American Federation of Labor is opposed to the registration of aliens proposal. If foreigners who come to this country are Germanized, it will not be long before the citizens of the United States will be compelled to register. Then will follow the fingerprinting of every citizen, as suggested by Mr. W. J. Burns."

Whatever misguided attitude may now be taken by the American Federation of Labor or other organized groups, which are apparently losing step with the march of human progress, it is unthinkable that the great masses of intelligent, liberty-loving and far-sighted Americans of all persuasions and points of view, will permit the enactment of prejudice, groundless fear and intolerance into law. The fundamental institutions of our country continue to be too deeply revered to permit of such misinterpretation of our moral standard and ideals.

SIDNEY HILLMAN

General President, Amalgamated Clothing Workers of America

It is to be hoped that American public opinion will defeat any attempt to introduce the alien passport system in this country. The proposed registration of aliens would be a great blow at the personal freedom that we now enjoy and I am certain that all those who appreciate the guarantee of such freedom will voice their protest in no uncertain manner when a bill putting this passport system into effect comes before Congress.

The argument that registration of aliens will make it possible to cope with the crime wave is a mere pretense. There are sufficient laws to cope with these elements provided they are properly enforced. The real effect of a measure of this character will be felt not only by the individual workers but by all of organized labor in its attempts to organize. A law of this kind will merely provide the anti-labor forces with a new weapon to be used in terrorizing the workers from joining organizations which protect their economic and social rights.

The experience with the Sherman Anti-Trust Act which was put on the statute books for the avowed purpose of preventing capital combining in restraint of trade is a case in point. This Act was in fact used to prevent labor from combining to improve its conditions and wages. This particular example should be ample proof to those in

the organized labor movement that should this registration-of-aliens law be passed it will be used primarily for the same purpose. Do not let those who do not today class themselves as aliens fool themselves into believing that the law will not affect them. Once the principle of registration is recognized by putting on our statute books such a measure, it will be easy to include other groups as well.

ISRAEL MUFSON

Executive Secretary of Conference for Progressive Labor Action

The action of the Executive Council of the American Federation of Labor, at its meeting in Miami, endorsing the registration of aliens, is most extraordinary, in view of its past continued opposition to any such move. While no formal statement concerning such action can be advanced by the Conference for Progressive Labor Action until we have seen the official announcement of the A. F. of L., we can at this time declare our complete opposition to any such law. The number of aliens who enter this country without knowledge of our immigration authorities is negligible, and no legal requirements, which will hamper the free movements of law-abiding inhabitants, are necessary in order to discover the small number of foreigners who enter our doors without permission.

The law is devised to better control the labor power in this country and is sponsored by those who desire to intimidate and exploit the alien worker. The action of the A. F. of L., as announced in the newspapers, reversing its opinion on such an important stand, shows the reactionary tendencies of the officials of the A. F. of L., and shows the need of such an organization as the Conference for Progressive Labor Action. One step further and we shall have the registration of all workers, whether alien or otherwise.

THE MICHIGAN ALIEN REGISTRATION LAW*

May 20, 1931.

Hon. Wilber M. Brucker,
Governor of Michigan,
Lansing, Michigan.
Dear Sir:

Rabbi Leon Fram of Detroit has telegraphed to me as Chairman of the Committee on Immigration of the *American Jewish Committee* (which includes a number of prominent citizens of Michigan among its members), to submit my views to you concerning a BILL FOR THE COMPULSORY REGISTRATION OF ALIENS, which I am advised is now before you for your official action. I respectfully submit that the measure ought to be disapproved, both on grounds of public policy and on the score of unconstitutionality. Registration of alien measures have had careful consideration from me ever since 1894-8, when I had charge of Chinese Registration cases as Assistant U. S. District Attorney in this city, under the federal statute applicable, and since then I have written on the subject and appeared before Committees of Congress in opposition.

I take the liberty of enclosing two pamphlets edited by me on the subject in 1926 and 1930, which collate the opinions of many leaders of public opinion and influential organizations throughout the country of all races and creeds in opposition, as also of "Hearings" before the U. S. Senate Committee on the Blease Voluntary Registration Bill held Feb. 21, 1930; though the latter bill provided merely for voluntary registration, the opposition was so great that the Senate declined to pass the bill a few weeks ago, after it had previously accidentally slipped through and been ordered to be reconsidered.

Such measures—especially if registration is required under substantial penalties, such as the bill before you provides for—tend to segregate resident aliens from citizens, causing them to be viewed with suspicion and hostility, and reciprocally arouse bitterness and ill-will on their part, and they open the door to boundless corruption, extortion and oppression, as witnesses our experience under the federal Chinese Registration Law. When, as here, the measure is accompanied

* Letter to the Governor of Michigan urging veto of Michigan anti-alien bill, 1931.

by penalties on employers for employing unregistered aliens—possibly not registered because of accident or arbitrary official refusal to register them, or because really U. S. citizens, erroneously charged with being aliens—still greater oppression results. These features are considered at length in the enclosures.

Since the infamous Alien and Sedition Acts of 1798,—which contained registration of alien clauses—passed not without the vehement opposition of Jefferson, Madison, John Marshall and Alexander Hamilton leading to the downfall of the Federalist party—I believe no serious attempt was made until now, to enact State legislation on this subject, and it is clearly unconstitutional. The nearest approach to such State legislation was the California Alien Head Tax Act, which was promptly declared unconstitutional as violative of treaties (*In re Terui* 187 California 20), and of the 14th Amendment (*In re Kotta* 187 California 27). Our own State Department protested against an attempt on the part of Cuba to require U. S. citizens residing there to be registered (6 Moore's International Law Digest 316-318) and President Arthur vetoed the Chinese Registration Bill of 1882 as probably unconstitutional and "undemocratic and hostile to the spirit of our institutions" (8 Richardson's Messages of the Presidents 116).

Resident aliens in the United States are entitled under treaties and the 14th Amendment, to engage in all the ordinary occupations without hindrance (*Truax vs. Raich* 239 U. S. 33; *In re Parrott* 1 Fed. Rep. 481), and Michigan took the lead in declaring a statute, forbidding aliens to serve as barbers, as unconstitutional (*Templar vs. State Board* 131 Michigan 254), and in New York an ordinance was just adjudged unconstitutional, forbidding resident aliens to keep lodging houses (*Matter of Carvallo* 228 App. Div. 719). Special taxes levied on resident aliens or employers of resident aliens are also unconstitutional (*Fraser vs. McConway Co.* 82 Federal 257; *Juniata Co. vs. Blair* 187 Pa. St. 193), and efforts to harrass them by forbidding teaching foreign languages in elementary schools are also unconstitutional (*Muller vs. Nebraska* 262 U. S. 390).

On its face this measure concerns itself with aliens,—who are the subject matter in large degree of U. S. treaties with foreign countries—and with the legality of their admission into the country—which since 1882 at least, has been exclusively a federal concern, and the U. S. Constitution forbids State legislation on such a subject. Even before the federal government in 1882 took over the regulation of immigration, the U. S. Supreme Court held, in *Chy Lung vs. Freeman* 92 U. S.

275, in adjudging a California immigration regulation act unconstitutional: "The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, *and not to the States*. It has the power to regulate commerce with foreign nations; the responsibility for the character of these regulations, *and for the manner of their execution belongs solely to the National Government*. If it be otherwise, a single State can, at her pleasure, embroil us in disastrous quarrels with other nations."

When the federal Government took affirmative action in connection with admission and exclusion of aliens, federal laws were held to be absolutely exclusive (*People vs. Compagnie Generale Transatlantique* 107 U. S. 59; *Head Money Cases* 112 U. S. 530). Even under the concurrent enforcement provisions of the federal constitutional amendment as to Prohibition, arrest by State officials in aid of federal law has been held to be unconstitutional (*Gambino vs. U. S.* 275 U. S. 310).

It is respectfully submitted that the bill should be vetoed.

Very respectfully,

MAX J. KOHLER.

NATURALIZATION AND THE COLOR LINE*

The President's recent annual message has directed general attention to our subsisting naturalization laws, which are commonly construed by our courts as denying to Japanese and other Asiatics the right to secure naturalization in our country, and the President's recommendation to confer right of naturalization upon the Japanese is quite certain to require careful re-examination of our present confusing and illogical statutes, discriminating among aspirants for citizenship along color lines. There is no specific prohibition upon Japanese naturalization, but the question is supposed to be governed by Section 2,169 of the Revised Statutes of the United States, as amended by the act of February 18, 1875, which reads:

"The provisions of this title (as to naturalization) shall apply to aliens, being free white persons, and to aliens of African nativity and to persons of African descent."

The words "free white persons" were employed in our naturalization laws since 1790.

Under this statute inferior courts have at least twice held Japanese not entitled to naturalization (Judge Colt, of Massachusetts, in *In re Saito* 62 Fed. Rep. 126, *In re Yamashita*, 30 Washington 234), though the principle of these decisions was vigorously combated by Professor Wigmore in an able article on "American Naturalization and the Japanese," published in 1894 in the *American Law Review*, and would seem to be inconsistent with the reasoning of the court in "*In re Rodriguez*," 81 Fed. Rep. 337, holding native copper colored Mexican Indians to be qualified for naturalization. The Supreme Court of the United States has never passed upon the question, though several cases in inferior courts, beginning with the case of *In re Ah Yup*, 5 Sawyer 155, decided in California in 1878, have held Chinese as well as Burmese, Hawaiians, Indians and half breed children of white Canadian and Indian parentage disqualified because of color. (See the latest collection of the authorities in Professor Moore's "Digest of International Law," Vol. III, pp. 329-332). With respect to Japanese persons, a further argument in favor of subsisting right to naturalization is now open to such applicants, not available at the time of the decision, by Judge Colt, of Massachusetts, in *Saito's* case, above referred to,

* *Journal of the American Asiatic Association*, Vol. 7, February, 1907.

because of the subsequent proclamation of the present treaty with Japan, in March, 1895, giving Japanese persons all rights of the most favored nation here, and the right of naturalization being frequently conferred by treaty (Moore: Digest of International Law). As regards the Chinese, it must be conceded that the right of naturalization has been expressly withheld by treaty, beginning with Article VI of the Burlingame Treaty of 1868 and the act of 1882, so that Chinese persons stand on a peculiar footing here, though the courts have often lost sight of this distinction. Of course, the absence of a prohibition of naturalization in the treaty with Japan, proclaimed in 1895, after the various treaty and statutory provisions against Chinese naturalization which had preceded it, in itself tends to indicate an intention to permit Japanese subjects to be naturalized.

In Professor Wigmore's able article he shows clearly that the courts have formulated at least three different inconsistent definitions of "white persons" under these provisions, under some of which Hungarians and many citizens of Japan's late antagonist, Russia, would be excluded. It is obvious that the term "white persons" is extremely loose and unsatisfactory and ill adapted for employment in legislative enactments.

The lay reader, however, who examines the phraseology of this existing enactment, and notes the use of the term "free white persons," may well shake his head in astonishment at this apparent recognition of residents of our free country, whom Congress still characterizes as "not free," and ask whether slavery was not abolished in the United States some decades ago! None of the decisions construing this statute, however, consider this curious association of words, doubtless because the statute was not construed as containing any words of limitation, except with respect to slaves and Indians, till long after our Civil War, to wit, in 1878, when the anti-Chinese crusade found the term "white" a convenient one to juggle with.

References to the history of these statutes and their contemporaneous construction may well be regarded as useful. The term "free white" is found already in the act of 1790, and was re-enacted in each successive naturalization act until the comprehensive revision of those laws was made in 1870. On July 2, 1870, when the Senate was considering this proposed revision, Charles Sumner moved "to strike out the word 'white' wherever it occurs, so that in naturalization there shall be no distinction of race or color." Senator Sumner stated that the amendment had been proposed by him already, three and a half

years before, and had at last been favorably reported by the Judiciary Committee. He stated that he

“proposed to strike out from that system a requirement disgraceful to this country and to this age. I propose to bring our system in harmony with the Declaration of Independence and the Constitution of the United States. The word ‘white’ cannot be found in either of these two great title deeds of this Republic. How can you place it in your statutes?”

The amendment was opposed by some Western Senators, on the ground that it might permit Chinese to be naturalized, whom they did not consider fit candidates for citizenship, and whose government, by the Treaty of 1868, had expressly waived right to naturalization. Various Senators, including Edmunds, expressed themselves as favoring the bill, but opposed to its consideration at that state, when it might jeopardize the passage at so late a day in the session, of the Naturalization Bill, and as inconsistent with an understanding for a prompt vote on that measure. However, on July 2, 1870, notwithstanding these difficulties, the amendment passed the Senate by a close vote, but the amendment to exclude Chinese from citizenship was pressed, and for the reasons specified the vote on Sumner’s amendment was reconsidered on July 4 and the amendment rejected. In lieu thereof an amendment was then adopted without discussion, extending right to naturalization “to aliens of African nativity and to persons of African descent,” in line with the other measures for enfranchisement of the emancipated slaves. (Congressional Globe, 41st Congress, 2nd Session, 1869-1870, part 6, pp. 5121-5124, 5148, 5168-5176).

When the revision of our federal statutes known as the “Revised Statutes” went into effect in 1875, it was found that the revisers had stricken out the words of limitation “free whites”; and a provision was inserted on February 9, 1875, in the “Act to Correct Errors and to Supply Omissions in the Revised Statutes,” restoring these words “free whites,” because the revisers had not been authorized to make changes in the law. (Congressional Record, 43d Congress, 2d Session, Vol. III, Part 2, pp. 1082). An amendment to restore the word “whites” was first reported unfavorably by the Committee on Foreign Affairs, but as this omission was concededly an apparent change of phraseology in the Revised Statutes, the opponent of the change, who moved to strike out the proposed restoration from the bill, withdrew his motion, because of the general purposes underlying this proposed statute to correct unintended errors and omissions. But it is apparent

that much can be said in favor of the view of the revisers that the statutes and constitutional provisions which had abolished slavery and declared civil rights, regardless of race and color, had superseded provisions distinguishing between "free whites" and other persons. This argument does not lose in force from the circumstance that all Africans were decreed to be qualified to become citizens by naturalization; the absurd color discrimination is well described by a New York Court in 1894, in denying naturalization to San C Po, a native of British Burmah, in saying:

"Originally it was intended to limit naturalization to free whites, but under stress of the feeling generated by the late war, Congress (in 1870) granted the boon of American citizenship to all native born Africans from the Mediterranean to the Cape of Good Hope. A Congo negro but five years removed from barbarism can become a citizen of the United States, but his more intelligent fellowmen, native born American Indians and of the yellow races other than the Chinese, are denied the privilege." (7 Misc. Repts. 471).

But leaving aside for the present the question of the meaning of "white persons" in this statute, it is apparent that the term "free" modifying "whites" in an act passed as far back as 1790 had a clear and unmistakable significance; the naturalization of enslaved persons, and Indians enjoying tribal relations, was to be prevented. Turning to the organic law of the land, we find that the federal Constitution, adopted just before this act of 1790, throws much light on the meaning of Congress. Though, as Sumner pointed out, it did not segregate "white persons" from others, Article I, section 2, subdivision 3, did provide for an appointment of representatives in Congress and direct taxes among the several States "according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term and excluding Indians not taxed, three-fifths of all other persons." Here we find the significance of the phrase "free whites"; enslaved persons, whether white or black, and Indians, were not regarded as fit persons to be counted among citizens and electors! Curiously enough, we know of no decision construing this term prior to 1878, but all the decisions on the statute concede that when this term was originally used in our naturalization laws, yellow races had not migrated here, and that our legislators had in mind merely negroes and Indians, besides the rest of the population, roughly described as "white persons." Judge Maxey says with much force in *In re Rodriguez supra*:

"Indeed, it is a debatable question whether the term 'free white persons', as used in the original act of 1790, was not employed for the sole purpose of withholding the rights of citizenship from the black or African race and the Indians then inhabiting this country."

Chancellor Kent, in his "Commentaries," commenting already in 1827 upon the phrase "free white persons," said:

"I presume this excludes the inhabitants of Africa and their descendants, and it may become a question to what extent persons of mixed blood are excluded, and what shades and degrees of color disqualify an alien from application for the benefits of the act of naturalization. Perhaps there might be difficulties also as to the copper-colored natives of America, or the yellow or tawny races of the Asiatics, and it may well be doubted whether any of them are 'white persons' within the purview of the law."

It is apparent how much less dogmatically Chancellor Kent construed these words than several of the judges of our own day. In 1856 Caleb Cushing was called upon to construe them in an opinion rendered by him as Attorney General, with particular reference to the right of Indians. (7 Opinions 746). He said:

"In the organic or other legislation of the United States and of many of the States, the expression 'white man' is frequently used in contradistinction from Indians. That is a very loose and vague expression, obviously. When applied to a man of the unmixed blood of our own race—that is, of a certain family of the nations of Europe and Asia—we understand it sufficiently for all practical purposes. (See *United States vs. Rogers*, IV Howard 567). But when questions of mixed blood arise, it appears at once that there is no intrinsic precision in the expression 'white man'."

He then considered the case of persons having some Indian blood in their veins, and the difficulties in the way of classifying them, in the absence of a federal definition, and the contrariety of State definition. In construing similar provisions, even in constitutions, various courts followed the principle laid down by the Supreme Court of Ohio (II Ohio 372), to the effect that all persons nearer white than black are to be considered as white persons.

When, on the other hand, we seek to define the term "white persons" in its supposed ethnological significance, we have "confusion worse confounded." Judge Sawyer, who first attempted it under this statute in the case of the Chinese applicant in 1878, concedes that the word,

"taken in a strictly literal sense, constitutes a very indefinite description of a class of persons, where none can be said to be literally white, and those called white may be found of every shade from the lightest blonde to the most swarthy brunette." He finds refuge, however, in the supposed popular significance of the word, which he treats as synonymous with "Caucasian," and then hesitates between various ethnological classifications. Blumenbach, following Buffon, divided men into five classes: Caucasian, Mongolian, Ethiopian, American and Malay. Linnaeus makes four divisions: European, whitish; American, coppery; Asiatic, tawny, and African, black. Cuvier makes three: Caucasian, Mongol and Negro. As Judge Sawyer satisfied himself that "white" is not used in popular language to include Mongolians, and he found affirmative evidence of an intention to exclude Chinese in 1870, he denied the application (*In re Ah Yup*, 5 Sawyer 155). In Saito's case, Judge Colt, in 1894, denied naturalization to a Japanese person, assuming that Japanese and Chinese persons are Mongolians, and therefore not white persons. He recognizes that when our first naturalization law was passed our country was inhabited only by Caucasians or whites, negroes or blacks, and American or red men, and finds illogically, in the selection of the term "whites" an intention therefore to exclude the (then to America unknown) yellow races. On ethnological lines he adds still further to the general confusion by mentioning, with approval, Professor Huxley's classification into Australoid (chocolate brown), negroid (brown black), Mongoloid (yellow), Xanthochroic (fair whites) and Melanochroic (dark whites). Without proceeding to consider still other inconsistent definitions, classifications and tests, laid down in still other cases, it is interesting to turn to Professor Wigmore's criticism of our judges as ethnologists, above referred to. Professor Wigmore satisfactorily demonstrates that the term "white" is incapable of systematic application, either on any such general theory as that adopted by the learned judge (Judge Colt), or on any other general theory; that it is in fact not available as a basis of distinction, and that "another method of solution must be found." He takes up the term in three possible senses: (a) As signifying literally a color quality, (b) as designating the Caucasians or Aryans, and (c) as embracing Europeans and their progeny. He shows that a classification as to color quality, in order to exclude Japanese persons, would have to exclude numerous southern European races as well. If "Caucasian" is to be employed in the sense of Aryans, various Asiatic peoples like the Afghans, Persians and Hindoos would have to be

included, while Hungarians and some Russian races, for instance, would have to be excluded from naturalization. The third classification would be doing violence to the English language, and exclude Armenians, for instance. Under the first two classifications he contends that Japanese would have to be included, and that they are not Mongolians.

As already remarked, none of the cases pay the slightest attention to the term "free" in this connection, nor the circumstance that the related constitutional provision indicated in what sense the words "free white persons" were used, when the act was drafted, in 1790. An examination of these various judicial opinions clearly demonstrates that our naturalization law requires amendment, and that our judges ought not to be encouraged to take further excursions into the *terra incognita* of ethnology. Nor can one well quarrel with Charles Sumner's demand that the principle of the Declaration of Independence should be applied to naturalization also, nor rebut Professor Moore's comment that we are illogically contradicting our own statutory declaration in favor of man's inalienable right of expatriation, by continuing statutes, denying naturalization on the score of color, and thus discriminating against Japanese persons in favor of the more illiterate black man.

RACIAL CLASSIFICATION UNDER OUR NATURALIZATION LAWS*

We have noticed with regret that in the new forms adopted by the Bureau of Naturalization, employed since July 1st, 1929, of "Application for a Certificate of Arrival and Preliminary Form for a Declaration of Intention" (Form A 2213) and "Application for a Certificate of Arrival and Preliminary Form for Petition for Citizenship" (Form A 2214) and in the "Application for Registry of an Alien" (Form 659, p. 2, line 3), and possibly other forms, an innovation has been introduced in requiring applicants to state their "race" (as well as "nationality"), in accordance with a classification appearing on the back of the forms, including "Hebrew," "Italian (North)," "Italian (South)," "Armenian," "African (black)," "Greek" etc. The first enumerated form further provides on its back

"In furnishing information as to your race in Statement No. 5, page 3, race is to be determined from the original stock or blood of your ancestors and the language you speak, as distinguished from nationality, which means the country of which you are a citizen or subject . . . There follows a list of races or peoples."

The statement on page 3, No. 5, just referred to in the quoted passage, instructs petitioner, in filling out his or her answer as to "race," to heed the direction "(See instructions on page 4)." The other forms are similar.

It is respectfully submitted that the requirement as to specifying "race" is not provided for anywhere in the Naturalization laws or regulations, and is illegal, inadvisable, and confusing, and should be eliminated.

2° Apparently this clause was inserted in view of the enactment of Section 10 of the Act of March 2, 1929 (45 Stat. 1516; U. S. Code, Title 8 Sec. 399 (e)), reading:

"The Commissioner of Naturalization is authorized and directed to prepare from the records in the custody of the Bureau of Naturalization a report upon those *heretofore* seeking citizenship, to show by *nationalities* their relation to the numbers of annually arriving

* Brief reprinted in Report of American Jewish Committee of Nov. 30, 1930, pp. 75-86.

aliens and to the prevailing census populations of foreign born, their economic, vocational and other classification, in statistical form, with analytical comment thereon, and to prepare such report annually thereafter."

It will be observed, however, that this section refers only to "nationality" and not to "race," and is not authority for any racial classification. Moreover, it contemplates preparation of a report on the basis of records then already in the custody of the Commissioner of Naturalization, (to be repeated annually thereafter), and prior to the adoption of this law of March 2, 1929, no "racial" statistics of naturalization were in the possession of the Department of Labor, so that the legislative intent even negatives such new classification.

3° When related statutes are considered, it becomes still clearer that Congress did not intend to authorize such racial classification. In the Immigration Act of 1917, Sec. 12 re-enacted a law long previously in force, requiring the officials of arriving vessels to deliver to immigration officials "manifests" of all aliens aboard, specifying, among other things, their "nationality," "country of birth" and "race." Here the Act specifically provided for a statement as to both "race" and "nationality," and it is obvious that if Congress intended to provide for exacting information as to "race" under the Naturalization Laws, it would have said so *eo nomine*. Even under the Immigration Laws, however, opposition to such classification has been expressed from time to time, and this organization, together with other Jewish organizations, submitted as an appendix to its Statement to the U. S. Immigration Commission in 1910, a brief in "Matter of Skuratowski," prepared by Mr. Max J. Kohler and Judge Abram I. Elkus, in a case in the U. S. District Court for the Southern District of New York, in which (among other points), authorities against the legality of such classification even under the Immigration Laws were collated (See U. S. Immigration Commission Reports, Vol. 41 entitled "Statements and Recommendations Submitted by Societies and Organizations Interested in the Subject of Immigration" pp. 177-181; compare pp. 266 *et seq.* 276-9). The Skuratowski case referred to ended, however, with the executive admission of the aliens involved, so that the question was not there decided, and it was not pressed further, moreover, because (1) the classification "Hebrew" under the Immigration laws was, in effect, a language classification merely, enabling the Government to furnish Yiddish-speaking interpreters quickly in the majority of Jewish cases pending before the immigration officials, dealing with applications to enter, and (2) it enabled the Jewish

immigrant aid societies quickly to identify their prospective proteges. Moreover, as pointed out, the Immigration law expressly required a racial classification. These important factors are wholly absent under the Naturalization laws, including the "Certificate of Registry" provision. Even the statistical value of the classification, valuable in a limited degree under the immigration laws, is practically valueless under the Naturalization laws, especially when the latter secure "nationality" figures.

Moreover, Congress expressly refused to extend such racial classification into new fields, other than the immigration laws, when the Conference Committee of the two houses of Congress on January 28th, 1909 struck out a clause for "racial" statistics from the bill for taking the U. S. Census of 1910 ("Congressional Record" Vol. 43 p. 1533), really at the instance of this organization ("American Jewish Year Book" for 5671 p. 350). It will be further shown hereinafter that this course was in accord with authoritative national American precedents. "Mother-tongue" statistics, expressly provided for by Congress in a Census Act, stand on a different footing.

4° Reverting to the "Instructions" contained on the forms involved, they are, moreover, erroneous and confusing (and force the applicant to give wrong answers in many cases), in describing this "racial" classification in every case, to denote both "original stock or blood of your ancestors" and "the language you speak." Take the Jewish immigrants from England, Germany, France, Belgium and Italy, for example; almost without exception, they do not speak the "Hebrew" language, but "the language you (they) speak" is the vernacular of the country from which they come. The same point applies to various other races, such as many of the immigrants classified as of the "African," the "Irish," "Scandinavian," "Welsh," "West Indian" races, etc. There is, however, no other class enumerated as a "race" within which they fall.

5° The American principle applicable was well stated by President Roosevelt in his Presidential message of Dec. 3, 1906 (Richardson's "Messages" Vol. XI p. 1211):

"Not only must we treat all nations fairly, but we must treat with justice and good will all immigrants who come here under the law. Whether they are Catholic or Protestant, Jew or Gentile; whether they come from England or Germany, Russia, Japan or Italy, matters nothing. All we have a right to question is the man's conduct. If he is honest and upright in his dealings with his neighbor and with the State, then he is entitled to respect and good treatment.

Especially do we need to remember our duty to the stranger within our gates. It is the sure mark of a low civilization, a low morality, to abuse or discriminate against or in any way humiliate such stranger, who has come here lawfully and who is conducting himself properly. To remember this is incumbent on every American citizen, and it is of course peculiarly incumbent on every Government official, whether of the nation or of the several States."

In the Annual Report of Secretary of Commerce and Labor Oscar S. Straus for 1907, he said:

"Laws so framed can only be regarded as involving a discrimination on account of race, and it is needless to point out that discriminations on account of race, color, previous condition or religion are alike opposed to the principles of the Republic and to the spirit of its institutions."

In carrying out this principle, a number of our States have followed the example of the Government in enacting Civil Rights laws, forbidding all discriminations on the score of race, color and creed in connection with public and quasi-public agencies (11 Corpus Juris 804 et seq.). In *People vs. King*, 110 N. Y. 418, the Court said that

"the clause in the bill of rights * * * is to have a large and liberal interpretation and the fundamental principle of free government expressed in those words protects not only life, liberty and property in a strict and technical sense against unlawful invasion by the Government in the exertion of governmental power in any of its departments, but also protects every essential incident to the enjoyment of those rights * * * In the judgment of the legislature, the public had an interest to prevent race discrimination between citizens, on the part of persons maintaining places of public amusement, and the quasi-public use to which the owner of such a place devoted his property, gives the legislature a right to interfere. If the defendant, instead of basing his exclusion of a class of citizens upon color, had made a rule excluding all Germans, or all Irishmen, or all Jews, the law as applied to such a case would have seemed entirely reasonable (*United States vs. Newcombe* (U. S. District Court) 4 Phil. 519). But the principle is the same, and if the law could be sustained in the one case, it may in the other."

In the leading case of *Yick Wo vs. Hopkins*, 118 U. S. 356, the U. S. Supreme Court said:

"Class legislation discriminating against some and favoring others, is prohibited. . . Though the law itself be fair on its face and im-

partial in appearance, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. The fact of this discrimination is admitted. No reason for it is shown, and the conclusion can not be resisted that no reason for it exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal protection of the law and a violation of the fourteenth amendment of the Constitution."

6° In the case of the "Hebrews," the term denotes both the Jewish religion and the Hebrew race (to concede that there is a connotation of "race" to designate such classification as "Hebrew," for the purpose of the argument), and in as far as a religious classification is involved, there is a resulting violation of the religious liberty provisions of the U. S. Constitution.

Said Judge Cooley, in his "Constitutional Limitations" (7th Ed.) pages 677-8:

"The state is not to inquire into or take notice of religious belief, when the citizen performs his duty to the state and to his fellows, and is guilty of no breach of public morals or public decorum."

In Judge Story's "Commentaries on the Constitution" Sec. 1879, he said:

"The Catholic and Protestant, the Calvinist and the Armenian, the Jew and the infidel, may sit down at the common table of the national councils without any inquisition into their faith or mode of worship."

In *Brink vs. Stratton*, 176 N. Y. 150 at 156-162, the New York Court of Appeals held it to be a violation of the religious liberty provisions of the N. Y. Constitution, to interrogate a witness as to his religious belief, with a view to showing that he was an agnostic; decisions in Virginia and Kentucky under less specific constitutional provision to the same effect (*Perry vs. Commonwealth*, 3 Gratton 632; *Bush vs. Commonwealth*, 80 Ky. 244) were followed in that case. The Court said, speaking by Judge Cullen, in criticizing an earlier opinion, in which one of the judges had said that "for so long as no religious test shall be required for judges and jurors, parties will be loath to cross-examine witnesses as to their opinions on matters of religious belief, unless they are

well assured the opinions of the witnesses are very obnoxious to the sentiments of citizens who say with Pope 'For modes of faith let graceless zealots fight, He can't be wrong whose life is in the right:' "

"That which the learned judge considered a safeguard against the abuse of the practice, to me constitutes its danger. Doubtless, no wise advocate will interrogate a witness as to his religious faith, unless it is obnoxious and unpopular in the community. But that is the case in which the exposure of a witness' belief would probably lead to injustice. It is somewhat singular that, shortly after the adoption of the Constitution of 1846, abolishing all religious tests or disqualifications, religious animosities, it is true not standing alone, but connected with questions of race and nationality, reached the highest pitch ever known in this country, not only affecting the action of political parties, but leading in many cases to riot and destruction of property. I think that no one who remembers that period will deny that during the prevailing prejudice and passion, a witness professing the unpopular faith might have found himself in some parts of the country, as much discredited by a jury, or some members of it, as an agnostic or atheist would. It is true that the feelings then existing have entirely or almost entirely subsided . . . Unfortunately, religious animosities are easily aroused, and we should not give sanction to a principle that may hereafter work great injustice."

President Cleveland, in a similar spirit, in 1885, in his first Message to Congress, publicly condemned Austria's course in refusing to receive Mr. A. M. Keiley as our Minister there, because his wife was a Jewess, saying that such action

"could not be acquiesced in without violation of my oath of office and the precepts of the Constitution, since they necessarily involved a limitation in favor of a foreign government upon the right of selection by the Executive, and *required such an application of a religious test as a qualification for office under the United States* as would have resulted in the practical disfranchisement of a large class of our citizens and the abandonment of a vital principle of our Government" (Richardson's "Messages" Vol. 8, pp. 325-6).

In connection with the same case, Secretary of State Bayard wrote ("Foreign Relations of the United States" for 1885, pp. 48-51):

"His (Mr. Keiley's) presence near the foreign Government in question is objected to by its agents on the sole ground that his wedded wife is alleged to entertain a religious faith which is held

by very many of the most honored and valued citizens of the United States. It is not believed by the President that a doctrine and practise so destructive of religious liberty and freedom of conscience, so devoid of catholicity and so opposed to the spirit of the age in which we live, can for a moment be accepted by the great family of civilized nations, or be allowed to control their diplomatic intercourse. Certain it is, it will never, in my belief, be accepted by the people of the United States, nor by any administration which represents their sentiments . . . *Into the religious belief of its envoy, or that of any member of his family, neither this Government, nor any officer thereof, as I have shown you, has any right or power to inquire, or to apply any test whatever, or to decide such question, and to do so would constitute an infraction of the express letter and an invasion of the pervading spirit of the supreme law of the land.*"

Similarly, in connection with Russian discrimination against Jewish holders of American passports, acting Secretary of State Wharton wrote to our Minister in St. Petersburg, February 28, 1893 ("Foreign Relations" 1893, p. 536) :

"It is apt to be inferred from Prince Cantacuzene's note that the declaration of Mrs. Lorin's religious profession was elicited from her by some interrogative process on the part of the Imperial Consul General. It is not constitutionally within the power of this Government or of any of its authorities to apply a religious test in qualification of equal rights of all citizens of the United States; and it is therefore impossible to acquiesce in the application of such a test, within the jurisdiction of the United States, by agents of a foreign power, to the impairment of the rights of any American citizen or in derogation of the certificate of this Government to the fact of such citizenship . . . His Majesty's Government, however, surely can not expect the United States to acquiesce in the assumption of a religious inquisitorial function within our own borders by a foreign agency in a manner so repugnant to the national sense."

When Russia answered that the discrimination was "one of race, and not of religion," our Government replied that "the two questions are inseparable" (Foreign Relations, 1895 p. 1058).

We, therefore, respectfully submit that this inquisition into the racial and religious field is improper and susceptible of unfortunate abuses, and that therefore it should be eliminated from the forms in question. February 14, 1930.

THE EXCLUSION AND EXPULSION OF ALIENS*

It is a strange circumstance that no comprehensive work has heretofore been published regarding that branch of our public law which concerns the right of aliens to enter the United States and the power of the government to deport unnaturalized aliens already residing here. Mr. Bouvé has rendered a great service to the legal profession and to the country at large by presenting this valuable pioneer work. By express statutory provision important powers involving the interests of millions of persons, including even the decision of disputed claims to citizenship, are delegated to the theoretically non-reviewable action of mere administrative officials. Since these officials are often without legal training even, they have especial need of such guidance in knowing and applying the law relating to their duties as can be furnished by an able and impartial lawyer like Mr. Bouvé. The absence of any such work heretofore has made it possible for the rights of aliens with respect to exclusion and deportation to be left largely to the individual caprice of the inspectors, whose decisions must necessarily be more influenced by the attitude of their temporary immediate superiors than by the "law of the land".

Mr. Bouvé has divided his work into six chapters, entitled respectively "Power and Methods of Exclusion and Expulsion" (148 pages), "The Existing Immigration Law" (172 pages), "Status of Aliens" (156 pages), "Judicial Review of Administrative Decisions" (70 pages), "Evidence" (67 pages) and "Deportation Procedure" (71 pages). In an appendix he reprints important foreign statutes regarding expulsion and exclusion of aliens, our Chinese Exclusion Laws, the present regulations for enforcing these laws, the White-Slave Traffic Act of 1910 and the Philippine Commission Acts on the subject. Attention is given in the text to the General Immigration Laws and their construction, and to the Chinese Exclusions Laws. The section dealing with "Status" contains important contributions to the law regarding citizenship, naturalization and expatriation. The grave conflicts in judicial decisions upon many of the points involved have led Mr. Bouvé in a number of instances to make valuable criticisms of judicial opinions.

* A Treatise on the Laws Governing the Exclusion and Expulsion of Aliens in the United States. By Clement L. Bouvé, Washington, John Byrne & Co., 1912-XXVI, 915 pp.

(From "Political Science Quarterly", Vol. 28, Dec., pp. 688-690, 1913)

These conflicts are often due to the failure to notice judicial precedents, for in the large majority of the cases here involved, the limited means of the aliens have prevented them from securing competent legal assistance, while trained experts have opposed their contentions on behalf of the government.

It is to be regretted that Mr. Bouvé has confined himself so closely to the *judicial* decisions construing these statutes, and has so largely ignored the administrative rulings. The percentage of cases which reach the courts is of course infinitesimally small, and even then the provisions which the courts are called upon to construe are seldom the ones under which the overwhelming majority of exclusions take place, as for example the "likelihood to become a public charge" clause, the clause excluding persons "certified as being mentally or physically defective" where the defect "may affect the ability of such alien to earn a living," and the "assisted immigrant" clause. The published volumes of *Treasury Decisions* contain several hundred useful, able (though forgotten) rulings under the immigration laws, prior to the creation of the Department of Commerce and Labor. These have been slightly amplified since by a few important printed *Decisions* of the latter department and *Opinions of the Attorney General*. Yet practically none of these is even cited by Mr. Bouvé. Though he observes that congressional reports on immigration and congressional debates often throw valuable light on the meaning of these statutes, one fails to find even a list of these, much less citations of important ones in connection with the provisions of the law to which they related. It is to be hoped that a future edition will also contain the "regulations" promulgated under the General Immigration Laws, which are of far more general value than those under the Chinese Exclusion Laws, which Mr. Bouvé reprints, and also that the text of the various earlier immigration laws be reprinted for convenient reference, and that the index be unified. The student will, however, find these various immigration laws collected in Volume 39 of the *Immigration Commission's Reports* (Senate Document, 61st Cong., 3rd Session, Doc. No. 758), entitled "Immigration Legislation", together with an interesting historical review of our immigration legislation.

ENFORCING OUR DEPORTATION LAWS*

A number of important developments in the field of deportation of aliens have occurred since this subject was discussed at last year's meeting of this Conference. The first comprehensive treatment of the subject has just appeared, under the imprimatur of Columbia University, written by Miss Jane Clark, one of last year's speakers, based on an able analysis, not merely of hundreds of reported court cases, but upon a study of hundreds of unreported administrative determinations, found in the files of the Bureau of Immigration in Washington. The book bears the title *Deportation of Aliens from the United States to Europe*, and contains over five hundred pages. Another very valuable study, likely to be published any day now, has been made for the National Commission on Law Observance and Enforcement by Mr. Reuben Oppenheimer of the Baltimore bar. As its contents are still confidential, and more or less inaccurate summaries based on unauthorized use of a tentative preliminary draft submitted to specialists by the Commission for their criticism have appeared, I must reluctantly forego further reference to it.

The ever growing importance of giving attention to the deportation of aliens is emphasized by the fact that during the year ending June 30, 1930, 16,631 deportations took place, and 7,017 unexecuted warrants were on hand (compared with only 3,661 in all in 1923), and that it has been estimated that this year will see the number increased to about 20,000. The number has been thus augmented by the re-establishment of wholesale raids, in which thousands of persons were unlawfully detained without warrants. This course, not generally pursued since the notorious anti-Red raids of 1920, was prohibited as illegal—even under the Chinese exclusion laws by Secretary of Commerce and Labor Oscar S. Straus under Theodore Roosevelt's presidency. On the other hand, during the closing days of the last Congress, committees on immigration of both Senate and House favorably reported bills to make deportation laws still more drastic by divided votes. As late as May 29, 1931, the state of Michigan adopted an extraordinary "Registration of Aliens and Deportation Act," the constitutionality of which is being challenged in the courts, and it is rumored that twenty-one other states are considering

* Delivered before the National Conference of Social Work, Section X, Minneapolis, 1931 (From "Proceedings" Vol. 58, pp. 495-505, 1931).

the enactment of similar measures. Of course deportation, designating expulsion of persons who had entered our country, should be sharply distinguished from exclusion.

An analysis of the 16,631 deportations taking place during the year ending June 30, 1930, shows that about 40 per cent were charged to entry without proper papers, approximately 15 per cent belonging to the criminal or barred immoral classes, about 15 per cent illiterates over sixteen years of age, about 12 per cent outstaying the time for which they were admitted, 5.9 per cent public charges or likely to become so, and about 4 per cent mentally defective. Of the remaining 7 per cent, only one person was of the so-called "Red" class—anarchists and communists—deportation of whom is so largely the battle cry of those who urge increased severity in the law. About 15 per cent were returned to Canada, 5 per cent to Mexico, and 2.75 per cent to other countries of the Western Hemisphere. These countries include the majority of those deported on the score of entry without proper papers.

The heavy increase in deportation per annum since 1924 is largely due to the fact that the Quota Act of that year abolished all statutes of limitations for illegal entry after its enactment, or for outstaying the period for which admission was authorized; and since the Act of June 24, 1929, such deported person, with a purely negligible exception, may not re-enter under penalty of prosecution for felony. Such violation of law, unlike every crime except wilful murder, had thus no limitation whatever; and, so far, Congress has not heeded recommendations of executive officers that the Secretary of Labor be given discretionary power to grant leave to reapply in deserving exceptional cases. As late as March 23, 1931, the United States Supreme Court decided in favor of the government a group of cases involving deserting seamen, in which it was held that sailors who entered after this act of 1924 became law cannot avail themselves of the three-year statute of limitations established by the General Immigration Law of 1917, but are deportable at any time. This class of seamen outstaying their shore leave, together with the class of surreptitious entries, constitute the overwhelming majority of aliens unlawfully in the United States today.

The Secretary of Labor, in response to a Senate resolution adopted December 8, 1930, estimated that there are about 400,000 aliens unlawfully in the United States today, only about one fourth of whom, by reason of the statute of limitations or other reasons, are still deportable; and he proceeded to comply with a request for recommendations to make the deportation laws more effective, by suggesting some drastic amend-

ments, underlying the proposed new deportation bill, which will be more fully considered presently (Senate Document No. 237 of the Seventy-first Congress, third session). In view of the absence of time limitations on deportation as to entries that occurred since the Act of 1924 was passed, the Department of Labor some months ago sought to establish the same rule in a group of cases of Hindoos, who had entered previously and who had testified without contradiction, as did also their witnesses, that they had entered prior to 1924. The United States District Court in the Southern District of New York, however, held that such orders of deportation may not stand, though unfortunately in unreported opinions.

As is pointed out by Miss Clark in her able book on deportation, "periods of war hysteria and economic depression create a fear of sudden ruin and a desire for panaceas," and this accounts for what Assistant Secretary of Labor Post styled "The Deportation Delirium of 1920" in his book of that title, and also for the "delirium" accompanying our present economic distress. The mania has become prevalent in certain quarters that, by deporting the alleged 100,000 aliens supposed to be here illegally and a few aliens or citizens here legally in the bargain, much will be achieved in the direction of abolishing the "hard times" in which we find ourselves. Hence proposed congressional action; hence governmental raids and other measures against resident aliens; hence efforts to enact new laws greatly curtailing naturalization; hence such drastic and well nigh incomprehensible measures, such as the Michigan "bill defining a legal resident of the State, as distinguished from a citizen of the state," recently enacted.

In 1882, Congress enacted our first Chinese exclusion law, as well as our first general immigration law, and although the latter contained no deportation, as distinguished from exclusion provisions, the former did, and authorized judicial proceedings by ordinary methods to deport Chinese persons "found unlawfully in the United States." Given the right to exclude, the right to deport persons promptly after entry, who have circumvented exclusion laws by surreptitious or fraudulent entry, follows almost as a matter of course. Entirely different considerations, however, govern the attempt to vest such power—in disregard of constitutional "bills of rights," safeguarding jury trial and individual rights in judicial proceedings and ordinary due process of law—in administrative officers, including the right to arrest and imprison for months, and the shifting burden of proof, and especially authorizing deportation by such methods for matters arising after admission, even regardless of the lapse of nearly a lifetime in some cases.

In Section 11 of the general immigration act of 1891, we encounter our first real federal administrative deportation provision (leaving aside a contract labor deportation act of 1888 of similar but narrower scope), the new act's language being general, and authorizing deportation within one year after entry of "any alien who shall come into the United States in violation of law," as also of any alien "who becomes a public charge" within that period "from causes existing prior to his landing", no judicial machinery being specified, nor any opportunity for a hearing, nor a warrant resting on oath. The act was so abhorrent to what were regarded as fundamental constitutional principles, including express guarantees of the rights of resident aliens in times of peace in Magna Charta itself, that it remained a dead letter for years. In 1899, however, a test case was instituted in the case of one who entered clandestinely and was a pauper, which involved the question which later reached the Supreme Court as the *Japanese Immigrant Case*, 189 U. S. 86. Judge Hanford in the United States district court in the state of Washington, in an able opinion, held it unconstitutional in *In re Yamasaka*, 95 F. R. 652.

In the interim between the enactment of the deportation act of 1891 and the United States Supreme Court's decision, Congress had passed the Chinese Registration Act of 1892, which provided, despite inconsistent treaties, for deportation of aliens, lawfully here, for non-registration, under judicial proceedings, it is true; but which withheld jury trial, authorized imprisonment, reversed the burden of proof, abolished the presumption of innocence applicable to criminal proceedings, and exacted the testimony of white persons for the defense. This was a fundamental disregarding of principles of constitutional law applicable to all civil and criminal judicial cases. Despite the views of leaders of the American bar like Joseph H. Choate, James C. Carter, and others, this enactment was sustained as constitutional in the Fong Yue Ting case, 149 U. S. 698, notwithstanding vigorous dissenting opinions by Justices Brewer, Field, and Fuller. In order to sustain the act, the court maintained that determination of the questions involved might have been left to administrative officials, instead of the courts, and that only as many of the usual incidents of a judicial trial might be accorded as Congress saw fit. The same right that the sovereign possesses in other countries concerning exclusion and expulsion of aliens was held to have been impliedly at least conferred upon Congress, and the powers being in large degree extra-constitutional, constitutional restraints in general were inapplicable.

It is, of course, difficult to distinguish these principles from those involved in the Japanese immigrant case, but, on the other hand, almost equally difficult to reconcile them with clauses in Magna Charta and other "bills of rights" provisions. When the Japanese immigrant case reached the Supreme Court, even the majority opinion, which sustained administrative deportation (Justices Brewer and Peckham dissenting) found it necessary to supplement the reasoning of an intermediate circuit court of appeals decision by pointing out that, in order to make it constitutional, it was necessary to read into it as thereby implied "the fundamental principles that inhered in 'due process of law' as understood at the time of the adoption of the Constitution", including opportunity to be heard according to the due process of law required in administrative hearings. Accordingly, thereafter, departmental regulations were established, to govern deportation proceedings.

It is, however, a most dangerous course to intrust such powers with largely implied limitations under which over 16,600 persons were deported in 1930, to overzealous laymen, unfamiliar with law, dealing with ignorant and generally impoverished laymen, themselves unfamiliar with their rights and commonly unable to secure counsel or even bail. The courts have been gradually compelled to enlarge the rights of the prospective deportees by defining their constitutional rights. Not only is such procedure limited to persons found to be aliens, but in deportation proceedings—unlike exclusion—the courts have held that one found in the country, making out a *prima facie* case of American citizenship, has a right to judicial review on the facts, as well as the law, before deportation may take place (*Fung Ho vs. White*, 259 U. S. 276). It has also been held that statutes, purporting to make the determination of the administrative officials non-reviewable by the courts, are ineffective to bar judicial review, not merely where unfairness took place, but also where there is a fundamental error of law against the alien, and that deportation in the absence of all competent adverse evidence against him is an error of law (*Gegiow vs. Uhl*, 239 U. S. 3; *Davies vs. Manolis*, 179 F. R. 818; C.C.A.).

Much light on the conditions attending deportation proceedings was thrown by recent able investigations. It appeared from them that notwithstanding the fact that the statute confers the highly delicate and discretionary authority to issue warrants of arrest in such cases only on the Secretary of Labor and his regular assistants, such applications numbering about 20,000 per year are passed upon by two warrant officers in his office. They are commonly granted by telegram on mere

telegraphic request, though the Fourth Amendment, requiring all warrants to rest on oath, applies. Even the regulations have unlawfully provided that the "oath" involved may be the oath of office of the inspector, instead of an oath as to the facts involved. The statute, even now, throws the burden of proofs as to some of the material facts involved on the alien respondent, and the new proposed deportation bill seeks to do this as to all the facts involved, though Congress rejected such provision in 1924 (*Congressional Record*, LXV, 6252 F. F., 6644). The institution of the proceeding in an overwhelming majority of cases (95 per cent) results in a recommendation for deportation, and in 90 per cent of the cases, the recommendation of the inspector, acting as complainant, prosecutor, and judge in one, is adopted by the assistant secretaries of Labor, who seldom even scrutinize the records with any care, but almost invariably follow the recommendations of an unofficial, extra-legal "Board of Review" of their subordinates, despite the statutory mandate.

In only about 15 per cent of the cases is the respondent able to give the \$500 bail bond commonly exacted, in default of which he is kept in custody (commonly in jail), until deportation actually takes place. This is from a few weeks to three to four months after detention begins, followed often since March 4, 1929, by a jail sentence for the crime of illegal entry. In only about one sixth of the cases is the respondent able to secure counsel, ranging from 1 to 2 per cent along the Mexican border to about 20 per cent in New York City. Obviously, in almost all cases, the placing of the burden of proof carries with it deportation. Judicial review, through habeas corpus proceedings, took place in 1930 as to only 2 per cent of all deportees, and was futile in five-sixths of these.

Under such conditions, too, the constitutional right to adduce evidence in one's own behalf is generally a mockery. The new proposed deportation bill seeks to lodge the right to issue warrants of arrest in any inspector who may be designated, however irresponsible and unbalanced, despite the usual foregone consequence, and would in effect legalize arrests without even "John Doe" warrants. Such have taken place in wholesale raids in New York and elsewhere. Even church institutes and social halls in which thousands of alleged aliens congregated have been so raided, the handful of federal officials being aided by state police wholly unfamiliar with the requirements of the immigration laws. The proposed bill would also make it practically impossible for the alien or alleged alien to adduce any evidence, because of a new

clause making anyone liable to criminal prosecution who "harbors" an alien, with alleged reasonable grounds to believe that he entered unlawfully. This would be used as a club against his relatives or friends, daring to testify for him. A clause aimed at prospective employers of such aliens will be considered presently in connection with the new Michigan act. This proposed new federal deportation act is ably analyzed in the minority report filed by Congressman Dickstein, February 24, 1931 (House Report No. 2799, Part 2 of the Seventy-first Congress, third session).

The so-called Michigan Registration Act is a most extraordinary one, and marks an effort on the part of a state of the Union for the first time in many decades to encroach upon the federal power of deportation and compulsory registration of aliens, and its constitutionality is being challenged in the United States District Court for the Eastern District of Michigan, in the case of *Arrowsmith vs. Brucker et al.* This act is involved and so vague, indefinite, and confusing that it is extremely difficult to determine just what it provides for, and it is probably unconstitutional for that reason itself. Roughly speaking, the act declares two sets of offenses, punishable by fine or imprisonment and deportation, namely: first, entering the state, if defendant entered the country unlawfully as there erroneously defined, or is an "undesirable alien, as defined by the laws of the United States"; second, the action of aliens in residing in the state or doing business or being employed there without being registered, or employing such unregistered aliens. As to the former class, the act erroneously assumes that federal laws define "undesirable aliens," and state bars to their residence in Michigan are established. Probably persons convicted of certain offenses and found "undesirable" by the Secretary of Labor under the Act of 1920 are meant. It also assumes that ever since laws have "limited or restricted immigration"—which may well be regarded as contemporaneous with our national history—passports or other credentials have been required on entry, and aliens entering the country without such written credentials are to be excluded or deported from Michigan, after being fined or imprisoned. In fact, no credentials were required until the war passport act of 1918 was enacted. Exception is made here of native born citizens, so that the draftsman evidently intended to deal thus, even naturalized citizens of the United States falling within such classes.

Registration within sixty days after the enactment is required, but is permissible only on production of "proof of legality of entrance into the United States from the records of the office of the United States

Bureau of Immigration at the port of entry of such alien." In fact, no records of admission were required to be kept until 1906; and especially along the American side of the Canadian frontier, Congress recently ascertained that even these records were not kept for years after that date (36 Fed. (2) 241 n.), to say nothing of accidental omissions, misspelling, and changes of names, etc. Nevertheless, none of such persons can lawfully register under this act. In addition, whole classes of persons, whom Congress has adjudged to be non-deportable, are treated as criminals and deportable under this act, namely, persons not deportable because of statutes of limitations and persons registered under the federal act of March 2, 1929.

Still more serious are the penalties against employers, which will make it dangerous to employ aliens at all, as the employer is made criminally liable, if he employs a non-naturalized alien not having a registration certificate, or one having a certificate not lawfully issued to him, or one whose actual signature does not correspond with that on the registration certificate. As the prospective employer would employ such prescribed alien or alleged alien at his peril, the natural result would be that he would follow the line of least resistance, and not employ aliens or possible aliens at all. On the other hand, aliens here have the right under the federal constitution to engage in all ordinary pursuits. By an extraordinary provision, foreign corporations are exempted from the act. Probably deportation—as distinguished from exclusion—is supposed to take place under federal process only, as delivery is required to be made of the offending aliens to federal immigration officials, but the latter may not deport whole classes proscribed by the act, as seen, and may not take possession of them under the federal constitution without the Secretary's warrant. The whole act runs counter to the language of the United States Supreme Court in *Chy Lung vs. Freeman* 92 U. S. 275, in adjudging a California immigration regulation unconstitutional:

The passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress and not to the States. It has the power to regulate commerce with foreign nations; the responsibility for the character of these regulations and for the manner of their execution belongs solely to the National Government. If it be otherwise, a single State can, at her pleasure, embroil us in disastrous quarrels with other nations.

Similarly, the present Chief Justice of the United States said, on behalf of the United States Supreme Court in *Truax vs. Raich*, 239

U. S. 39, of an alien admitted into the country: "He was thus admitted, with the privilege of entering and abiding in the United States, and hence of entering and abiding in any State in the Union". Needless to say, grave doubts exist as to the constitutionality of this extraordinary Michigan act, about which no one scarcely seems to have known anything until the legislature presented it to the governor for signature.

The deportation situation has, in fact, become so serious that Judge Denison of the United States Circuit Court of Appeals for the Sixth Circuit only a few months ago gave expression to rules of general policy on behalf of that court in the case of *Browne vs. Zurbrick*, 45 Fed. (2) 931, as follows:

During a long period, with reference to immigration and exclusion acts a course of judicial construction developed, approving, or rather condoning, great laxity in the preservation to an alien of rights which in the case of a citizen would be considered essential to "due process of law".

After considering recent acts making a deportee forever ineligible for readmission, and return a felony, and resulting separation of family and human woe, he added:

Whether, in view of this change in the results of a deportation order, the courts will construe more liberally the due process rights of a resident alien is a question that will eventually call for consideration; here it is enough to say that, in applying the supposed statutory grounds of deportation to this alien, long rightfully domiciled here, the application must be clear, and cannot rest on doubtful interpretation.

THE DEPORTATION OF ALIENS*

Our deportation laws—which now involve nearly 20,000 aliens per annum deported by executive action and a somewhat larger number of persons subject to deportation who are permitted annually to leave voluntarily—have at last become the subject of careful and scientific study. For many years Congress has been making these laws much more drastic, and is annually being importuned to make them still more comprehensive and unrestrained. We are at last afforded opportunities to ascertain what dispassionate and careful unbiased students regard as sound principles of policy, which ought to be underlying considerations of our legislation and administrative action, and nine members of the Wickersham commission endorse Mr. Oppenheimer's recommendations (in line with Miss Clark's observations), with only two members dissenting from some of them only.

Miss Clark, instructor in government at Barnard College and newly elected president of the Conference on Immigration Policy, has prepared our first comprehensive work on our deportation laws. It is a scientific, painstaking study, which analyzes not merely substantially all of the hundreds of reported court decisions, but embodies a study of over 600 administrative records from the files of the Immigration Bureau, 518 of which arose during the second half of 1925, and every twenty-fifth case that arose in 1930, until 50 records had been studied. The subject is treated without bias in able historical setting, with a student's determination to let the facts speak for themselves. The first section of approximately fifty pages is devoted to an introduction and a historical outline of our deportation legislation, traced back to the English pauper settlement and removal laws. Somewhat over 200 pages are next taken up with an able study of the deportation law and the interpretation of its various provisions; then about 200 pages follow, devoted to a close study of the deportation procedure, as also some 10 pages of "conclusions."

* *Deportation of Aliens from the United States to Europe*. By Jane Perry Clark, 1913. New York: Columbia University Press. Columbia University Studies in History, Economics and Public Law Series No. 351, pp. 524. *Report on the Enforcement of the Deportation Laws of the United States*. By the National Commission on Law Observance and Enforcement, Including Report of Reuben Oppenheimer on The Administration of the Deportation Laws of the United States. Washington: Government Printing Office, pp. 179.

(From "American Bar Association Journal" May, pp. 331-332, 1932)

Our first general federal alien deportation law, adopted in 1891, was so badly drafted that it did not in terms provide even for an administrative hearing, and its constitutionality was sustained, in *The Japanese Immigrant Case*, 189 U. S. 86 (1903), only by reading into it *implied* constitutional limitations, only partially enumerated by the court. Even this loose phraseology has been retained in all the supplementary laws, which have constantly enlarged grounds and periods of permissible deportation, leaving resort necessary to departmental regulations which embrace only part even of necessary constitutional safeguards. Innumerable difficulties of construction of the laws have accordingly arisen, which Miss Clark ably grapples with, and for the first time permits even the general student of law to unravel. Her work is accordingly of great practical value, as well as an important contribution to the literature of administrative law and the rights of aliens.

Mr. Oppenheimer's study is admittedly more critical. He also had access to a large number of administrative records, in addition to those found in judicial determinations, concerning the rights of aliens and analogous judicial rulings. He selected as illustrative of administrative action every twentieth (later every fifteenth) departmental ruling made during the fiscal year ending June 30, 1929, besides personal investigation and court decisions. An enormous amount of new light has been thrown by him on the problems in question, involving so much that is vital for the alien, and he describes his inquiry not merely as relating to the "effectiveness" of the law, but also as to its "fairness." Thus he points out that in only about one-sixth of the cases has the alien-respondent adequate means to retain counsel, though the inspectors, appointed without any character investigation, have as their primary interest to report as many aliens as possible. The inspector's recommendations are followed in 95% of the cases by the secretary of labor, really acting through a non-statutory "board of review." Only 15% of the respondents are able to furnish the usual \$250 bail, and 10% more are released on their own recognizance, the rest remaining throughout the hearing helpless in custody, commonly in jail, for from a few weeks to three or four months. In 85% of the cases where there is no attorney, deportation is recommended, but only in 70% of the cases where there is such adviser. In 1930 only 56 aliens secured release from warrants of deportation by habeas corpus, about 1/6 of the number that sought the limited review our laws thus authorized in such class of cases, being only about 3/10 of one per cent of the number deported that year.

Mr. Oppenheimer criticizes the commonly prevailing practice of questioning the aliens without warning and in the absence of counsel, and the recently adopted wholesale raids without warrants of arrest or search. The absence of all discretion, even by the Secretary and the President, to withhold deportation where a case is established, is deprecated, despite frequent trivial grounds involved and grave resulting separation of families, and the absence of any statute of limitations as to nearly all entries since the Act of 1924.

The chief recommendations are that the department of labor be confined to investigation, prosecution, and execution of warrants, and the creation of an independent "board of alien appeals" is urged, to hear the cases, members of which are to be named by the President, with publicity for their findings; also raising the caliber of immigrant inspectors, and instructing them to observe constitutional rights and elementary principles of fairness, and discretionary power is sought to be vested in this new proposed tribunal to remit deportation. More co-operation between state and federal officials is urged, especially as regards criminal aliens; and promotion of furnishing of counsel, partly through co-operation with legal aid and related immigrant aid organizations. Prohibition of deportation of aliens to countries where their political opinions endanger their lives is also urged, and strengthening of agencies for prevention of unlawful entry. It is a marked tribute to Mr. Oppenheimer's persuasiveness and forceful presentation that his recommendations have been approved by so large a majority of the commission, in whose report it is stated that the joinder of the functions of detective, prosecutor and judge, encountered in the immigration inspectors, has not been found safe in any other phase of life. The commission also says: "The most temporary resident of the United States, owing allegiance to another government, is, while he is on our soil, given the equal protection of our laws, and it is not consistent with the spirit of our institutions or the express language of our bills of rights to deny the substance of these guarantees to resident aliens, either directly or indirectly, by adopting processes for their assurance which in effect diminish their efficacy to classes of persons not classified by the Constitution itself." Just before these words were penned, Judge Denison, speaking for the circuit court of appeals, in *Browne vs. Zurbrick*, 45 F. (2nd) 931 (1930), pointed out that "during a long period, with reference to immigration and exclusion acts, a course of judicial construction developed, approving, or rather condoning, great laxity in the preservation to an alien of rights

which in the case of a citizen would be considered essential to due process of law," and he stated that in view of recent acts making a deportee forever ineligible for re-admission and return a felony, and resulting separation of families and human woe, the question whether "the courts will construe more liberally the due process rights of a resident alien" is one "that will eventually call for consideration." Some of Mr. Oppenheimer's recommendations are similar to those contained in the report of the United States immigration commission, prepared as far back as 1910.

PART III
TRIBUTES TO FRIENDS
OF THE STRANGER

BARON MAURICE DE HIRSCH'S 100TH ANNIVERSARY*

The centenary of the birth of Baron Maurice de Hirsch will be observed today by thousands of grateful recipients of his bounty throughout the world.

Baron de Hirsch, who died on April 21, 1896, in conjunction with his wife, gave more than one hundred million dollars to charity, a stupendous sum not heretofore equalled by any one Jew or Christian.

Born in Munich, Maurice de Hirsch was the third of his line to bear the title of Baron, being the son of Joseph von Hirsch and the grandson of Jacob von Hirsch by whom the family fortune was founded.

The large fortune which the Baron inherited from his father and grandfather was augmented by the dowry of his wife, Clara Bischoffsheim, daughter of Senator Raphael Bischoffsheim of Brussels, who encouraged her husband in his charities and carried on his philanthropies during the three years by which she survived him.

Baron de Hirsch's chief gifts were: about 55 million dollars to the Jewish Colonization, commonly known as the "Ica"; several million dollars to the Alliance Israelite Universelle for the Jews of Turkey, whose annual deficit he paid for years, and which gifts he ultimately consolidated to yield an income of about \$80,000 per year; about eight million dollars to a foundation for the benefit of the Jews of Galicia; about \$2,400,000 to the Baron de Hirsch Fund of New York, which his widow augmented, to make about four million dollars; a Canadian Jewish foundation received about two million dollars of his money; a Vienna and Budapest Fund received about \$1,455,000, and about \$500,000 to the Empress of Russia, for charitable purposes. He also gave large additional sums for non-sectarian and other Jewish charities, including London hospitals, to which he gave his winnings on the turf, so that it was said that "his horses ran for charity".

His chief foundation, the Jewish Colonization Association, made colonization of Russian Jews in the Argentine Republic its chief venture, but notwithstanding the fact that almost all of the Jews there, now numbering about 200,000, settled there under the auspices of the "Ica", its greatest service was the revolutionary change it effected in the character of Jewish immigration from Russia. Until its concessions

* *Jewish Daily Bulletin*, Dec. 9, 1931.

were received from Russia about 1891, all immigration from Russia was illegal, and treated as a crime on the part of would-be immigrants. The "Ica" concessions legalized Jewish immigration, and passports to leave Russia were procurable through its "information bureaus", which also gave accurate information as to conditions in places to which the immigrants sought to go. The result was that thereafter the migrating Russian Jews,—who have numbered over three millions since,—were no longer clandestine fugitive refugees, commonly abandoning even their personal effects when departing from Russia, but voluntary and prepared emigrants.

In the United States his "Fund" was used to establish an agricultural school at Woodbine, New Jersey, and latterly agricultural scholarships for Jews; a trade school in New York City; promotion of agriculture in the United States by large subsidies to the Jewish Agricultural Society; pioneer work in establishing Americanization and industrial classes for Jewish immigrants, and aid to immigrants after arrival. Almost all of its funds were disbursed through other agencies.

The "Clara de Hirsch Home for Working Girls" in New York City was one of the American charitable endowments of his widow, Clara de Hirsch.

The Jewish Publication Society is planning to issue a detailed biography of Baron de Hirsch, which Max J. Kohler is preparing, and the "Baron de Hirsch Fund" has commissioned Prof. Samuel Joseph to prepare a history of its activities, which it will publish next year.

SIMON WOLF—IN MEMORIAM*

It is, however, as the champion and devoted friend of the immigrant, that Simon Wolf is likely to be best remembered, and when a wide-scaled celebration of his 80th birthday took place in 1916, the Hebrew Sheltering and Immigrant Aid Society tendered him a banquet in New York, devoting its December, 1916 "Bulletin" entirely to an account of it. It was there calculated that he had been instrumental in preventing the deportation of no fewer than 103,000 Jewish immigrants, thus opening to them the opportunity to become worthy and self-supporting Americans. Beginning early in 1881, at no hour of the day or night were the ears of this American patriot closed to the entreaties of those of his unfortunate East European co-religionists, who sought to enter this land of promise. Such self-sacrificing, indefatigable, and disinterested devotion is indeed unique. No eight-hour or twice eight-hour day was long enough to afford time for such achievement, which meant incessant personal communication with the immigration officials during their office hours, and telephonic and written communications long before and after such hours. Secretary of Labor Nagel well described his methods by saying: "The way Mr. Wolf approaches us is calculated to get best results, because he comes to us fairly, good-naturedly, and when he is defeated, he recognizes our point of view. That is the spirit in which you ought to come. You must keep in mind that an organization engaged in the protection of alien people naturally assumes the character of an advocate. It is bound to do it. It is human".

His warm sympathy, his conscientious fidelity to truth, and his devotion, above all, to the interests of our country, on the one hand, and, on the other, the respect which he aroused for his indefatigable self-sacrificing zeal, and sane and tactful petitioning, account for such a record of admissions of unfortunate fugitives from persecution. This work by this German-born American patriot, almost exclusively for the benefit of Russian and Roumanian co-religionists, many of whom had been disposed abroad to quarrel and dislike each other, has been an important factor in abolishing in the United States, the distinction between a "Portuguese Jewish Synagogue", and English, Bohemian,

* From "Selected Addresses and Papers of Simon Wolf", pp. 22-4, 27, etc., 1926.

German, Polish, Russian and Roumanian congregations. Our unifying and democratic melting pot welds them all alike into patriotic American citizens of the Jewish faith.

In fact, it was largely due to Simon Wolf, aided in later years, by Jacob H. Schiff, Louis Marshall and a few others, that American Jews ardently espoused the policy of the "open door" for their persecuted European brethren, and did not follow the dictates of self-interest, or the line of least resistance, as did English Jews in 1771, and concur in efforts to exclude them from our land. Generally, Simon Wolf's role was wisely that of a mild Aaron, rather than that of a fiery Moses, but he could, when occasion called for it, be righteously indignant, and he loved to associate more vehement spirits in his activities.

His published correspondence with Senator Chandler, the opponent of the Jewish immigrant of the early nineties, was not lacking in vehemence, nor was his disapproval of Commissioner Williams' lawlessness in 1910. In 1891 he secured from Secretary of State Foster, one of the ablest state papers we have, which justified the admission of the Russian refugees from religious persecution who counted on the assistance of relatives and friends here for temporary maintenance, and thereby kept the door open to these unhappy fugitives, and a decade later, Wolf secured an important ruling that persons dependent on private charity are not public charges. Able and convincing arguments were made by him on behalf of the immigrants, before the United States Industrial Commission of 1901, and the United States Immigration Commission of 1910, and before numerous Congressional committees. He it was who led the movement for the federal legislation which compelled the steamship companies, under heavy penalties, to give the immigrants a physical examination before their embarkation, so that these companies should not close their eyes to obvious excluding defects, in order to fill their own coffers. Nor were either negro or Chinaman beyond the reach of his sympathetic voice or pen, and Father Walter of St. Patrick's Church of Washington once said: "The best Christian in Washington is Simon Wolf, the Jew."

JACOB H. SCHIFF—IN MEMORIAM*

The Baron de Hirsch Fund Activities

Jacob H. Schiff was one of the nine original trustees selected by Baron de Hirsch himself over thirty years ago to administer his American foundation, and continuously since then, down to his death, he rendered to it untiring devotion and invaluable service, as Trustee and Vice-President. Generally the duties of a Vice-President are apt to be nominal, but in Mr. Schiff's case they certainly were not so; he not only served, in addition, as chairman of the Fund's finance committee, but arranged to have nearly all meetings held at his office or home, in order to be able to attend regularly, despite so many other claims upon him. His associates on the board were surprised, especially at annual meetings, at his manifestations of thorough familiarity with all the details of the Fund's affairs; he went to much personal inconvenience by making periodical visits to Woodbine, New Jersey, and he devoted much of his best time and thought between, as well as at, meetings, to its activities.

Even before Mr. Schiff was formally appointed a Trustee by Baron de Hirsch he served as one of his advisers with respect to the scope and limitations of the proposed deed of trust, and manifested particular care that rumors as to this large endowment should not serve as a will of the wisp to attract undesirable emigrants from Russia, unable to support themselves in new and untried American surroundings, under the delusion that they would be supported out of Baron de Hirsch's millions. Similarly, he was always emphatic in his expression of preference for constructive charitable work, as opposed to demoralizing cash relief.

It was Mr. Schiff who first interested President Roosevelt in the importance of sending an official letter to Roumania—since prevention is better than cure—demanding that she stop her Jewish persecutions, because of our Government's right to insist that such enforced wholesale migration to our shores should not take place. The result was that, with the active co-operation of Oscar S. Straus, Lucius N. Littauer and Simon Wolf, he secured Secretary Hay's famous Roumanian note of 1902, which dispatch marked a new principle of international law, as shown in Kohler and Wolf's "Jewish Disabilities in the Balkan

* *American Hebrew*, October 8, 1920.

States". Similarly, he was an influential factor in securing the transmission by President Roosevelt's direction of the famous Kishineff Massacre Petition, as is shown in Simon Wolf's "Presidents I Have Known." Possibly his first important Jewish communal activity was his service as treasurer in 1878 of a committee which collected \$7,000 for the benefit of Jews in the East who suffered from the consequences of the Balkan war which had just ended.

It is difficult to outline Mr. Schiff's services to the Fund without enumerating all its activities, so completely was he identified and in accord throughout with all its policies and work. From the start, constructive pioneer work along educational lines, particularly in our vernacular and civics, in trades and agriculture, were undertaken. It is seldom realized that the Baron de Hirsch Fund, with Mr. Schiff's hearty approval and co-operation, over thirty years ago, really started intelligent, systematic Americanization work for immigrants in this country, through special immigration classes in English, particularly to enable pupils who had acquired some education abroad to qualify quickly for the regular classes in our public day schools and night schools, those great bulwarks of our democracy.

Nor was anyone more emphatic than he as to the duty of the State to take over such classes for Jew and Gentile alike, when private or denominational charities had demonstrated their utility and value in practice. He was also deeply imbued with the importance of having the Jews, both in the country's interest, and their own, participate largely in agriculture and the various handicrafts, and not be merely middlemen and traders in our largest cities, and hence the Fund has always devoted much of its energies and funds to its Trade School and its Agricultural School, and the system of mortgage loans and advice to qualified Jewish farmers, developed so successfully for years by the Jewish Agricultural and Industrial Aid Society as one of its agents. His face beamed with delight almost every time our Trade School was mentioned, so proud was he of the splendid results achieved right along under Prof. Yalden's able guidance and initiative.

Comparatively recently, on September 18, 1916, he showed his great interest anew in Jewish agricultural instruction by donating \$150,000 towards the expense of a new agricultural school site and building near Peekskill for our school, our co-trustee, Mr. Julius Rosenwald, contributing an equal sum. No public announcement was ever made of this gift until now. Unfortunately, one of the consequences of the war and resulting increased demands upon an allied organization have

forced us to abandon the school project and devote the corresponding portion of our income instead to scholarships for Jews in New York State Agricultural School and to a subsidy for the National Farm School, at Farm School, Pa.

The foregoing, and an article on the Industrial Removal Office, published elsewhere, shows how strongly Mr. Schiff recognized the duty of maintaining agencies for rendering the immigrant a useful, self-supporting American citizen, as a necessary corollary to demands that the door should remain open as a national asylum for such of the persecuted and oppressed of Europe as were in fact qualified to enter. Even few of those specially active in immigrant aid work know how vigorously and courageously Mr. Schiff fought for this open door to the land of opportunity, which had afforded to him as a lad its golden opportunities. When about thirty years ago there was danger that narrow and erroneous principles, insidiously promulgated by high immigration officials, would close these doors and cause the deportation of thousands of unfortunates, his vigorous and courageous protests, primarily, kept this door of hope open and led to the removal of the highly-stationed culprits who sought to deny to the immigrant the due process of law which is their due in our beloved land. Similarly, twenty years later, like a Hebrew prophet of old, on behalf of the victims of European despotism, he hurled his thunder in the face of narrow and unwise officials occupying high rank, engaged anew in a program of Know-Nothingism. But he never urged the admission of the unworthy, of those physically, mentally or morally incapable of becoming useful Americans, or of those likely to become public charges, while, on the other hand, he always emphasized our reciprocal duties to the aliens here, to aid them in making themselves good and happy citizens of our country.

LOUIS MARSHALL—70TH BIRTHDAY TRIBUTE*

Few, if any, subjects engrossed the attention of Louis Marshall during many years more fully than did the immigration problem. The American-born child of immigrant parents, he was deeply grateful to the United States for having afforded his parents and himself glorious opportunities in this land of promise, and he was eager to keep the door open for other deserving immigrants from abroad, subject only to the best interests of his adopted country, and eager to devise methods for making the immigrants worthy and patriotic citizens of their adopted country. Repeatedly, before congressional committees, he emphasized this feeling. Thus, on January 20, 1916, he stated before the Committee on Immigration and Naturalization of the House of Representatives, in opposing a bill which included a literacy test: "I consider it the greatest source of pride to me to say that my father, when he came to this country as an immigrant, worked as a track-hand on the Northern Central Railroad in the construction of that railroad. . . . The difference between Mr. Fitzpatrick (a prior speaker) and myself is simply this: The door of opportunity which was open for him, he desires to close upon others. The door of opportunity that was open to my parents and to me I desire to have swung wide open for any noble worker, for any man or for any woman who has the desire to become a part of our population and to do their part in the upbuilding of this country. . . . I would be the last man in the world to say that this country should receive people who are physically unfit, mentally unfit and morally unfit to come into this country. . . . The present law does exclude them. . . . My father was not literate; you would scarcely say that he was. He was self-taught after he came to this country, and read with much difficulty. But the most sacred feeling that he had was to give an opportunity to his children to become American citizens, and to grow up with this country, and to incorporate themselves into this country, to do their part of the work of it. And so I have known thousands—I would almost say millions—of this kind. My mother was probably, in my judgment, one of the noblest women that ever lived. She was unable to speak English, and lived in this country for many years (from 1853 on, having fol-

* Reprinted from the Louis Marshall Seventieth Birthday Issue of the "*Jewish Tribune*", Dec. 10 and 17, 1926.

lowed the man who became her husband, who had arrived four years earlier). She could read English, but could not speak it, and down to her dying day at the age of 83, she read four newspapers every day, in three different languages".

Coming in 1894 from Syracuse to New York to live, Louis Marshall soon realized, in our great metropolis, as never before, the needs of the immigrant and the opportunities to improve his condition through Americanization and better religious instruction. He soon thereafter became a member of the board of directors of the Educational Alliance, and has continued to influence its activities deeply ever since, particularly in the direction of stressing its religious and moral opportunities. Characteristically enough, this was the field that he particularly devoted himself to, in what was probably his first and best-known plea for the immigrant before a congressional committee, namely on March 11, 1910, published with a summary of the statements of his associates in the "American Jewish Year Book" in 1910-11 under the caption "In Defense of the Immigrant" (pp. 38-61), though he did not fail to combat restrictionistic proposed measures from other angles. The argument became part of the reports of the national "Immigration Commission" (Vol. 41, pp. 206-227).

Previously, however, he had served his city and his state on commissions which made important recommendations with respect to the treatment of the immigrant. The first of these occasions was in 1902, when the Hon. Seth Low as Mayor of New York City appointed him a member of a committee of five (three Christians) to investigate the Rabbi Jacob Joseph Funeral Riot of July 30, 1902. A gang of hoodlums had taken occasion to create a disturbance by pelting and insulting the funeral procession, consisting of about 20,000 orthodox Jewish mourners, and insufficient police supervision left the victims unprotected, while police recruits, on arriving, lost their heads and clubbed the innocent mourners and spectators instead of arresting the aggressors. The investigation placed the responsibility where it belonged, and led to the punishment of some of the miscreants, but the committee's report, dated September 12, 1902, made the occurrence one of moment by calling attention to the "complete lack of sympathy between the policemen involved and the residents of the East Side" (*American Hebrew*, Vol. 71, pp. 497-9), as also to the unfairness of some of the petty magistrates in cases involving these new arrivals, matters which were largely rectified thereafter.

Much more important were his services on the "Immigration Com-

mission" which was appointed by Governor Hughes in 1908 and which rendered a report transmitted to the Legislature on April 5, 1909, and which in print covers 252 pages. The commission consisted of Louis Marshall (who was elected chairman), Frances A. Kellor, P. V. Danahy, Charles W. Larmon, Marcus M. Marks, James B. Reynolds, G. C. Speranza, Lillian D. Wald and Edward B. Whitney. The commission had before it an unplowed field, and the idea of having a governmental board study the immigration question, not from the point of view of exclusion and admission of immigrants, but for devising expedients for their protection and assimilation, was unique. Forty-two meetings were held, including 37 hearings, and the commission made numerous important recommendations. It suggested methods (1) to develop the industries of the state by directing immigrant laborers to them; (2) to prevent congestion by getting immigrants out of the city; (3) to improve the farming situation by encouraging investments and by sending immigrant laborers to work on them; (4) to collect information about industrial opportunities in other states and to fit men into occupations for which they are adapted; (5) to secure to the immigrant instruction in English and civics in labor camps and rural sections, and to better educational facilities in New York City in order to hasten assimilation; (6) to inspect employment agencies and labor camps for immigrants, so that they shall not be defrauded or mistreated; (7) to provide a bureau, to keep a record of all alien children, and aid in locating them and enforcing child labor laws and compulsory education laws; (8) to protect immigrants from exploitation on the docks and ferries and in the Battery, and while looking for work, and in connection with deposits with private banks, with sale of steamship tickets and against dishonest interpreters in the courts and dishonest notaries public; (9) to provide an immigrant complaint bureau, and (10) to co-operate with federal officials in deporting alien criminals, insane and paupers. Important new constructive legislation was recommended, including the establishment of a state "Bureau of Industries and Immigration", and recasting of our laws regulating private banks and the sale of steamship tickets, and much of this was subsequently enacted. Several other states thereafter appointed similar immigration commissions, including Massachusetts, New Jersey and California, and thereafter under similar reports enacted similar salutary laws. It is interesting to observe that Mr. Marshall subsequently successfully defended some of these laws in the courts, his victory on behalf of the State of New York in the

case of *Engel vs. O'Malley*, 219 U. S. 126, in the U. S. Supreme Court in maintaining the constitutionality of the private banking law being particularly important.

With the organization of the American Jewish Committee in 1906, and particularly his election to the chairmanship in 1912, his activities on behalf of the immigrant became of prime importance. Reference has already been made to his first appearance before the U. S. House of Representative Committee on Immigration in March, 1910, when his associates were Simon Wolf, Cyrus Sulzberger, Leon Sanders, Abram I. Elkus and the writer hereof. From that time on, until a new immigration law was adopted in 1917 radically departing from our established policy of "regulating" immigration as distinguished from "restricting" it, the chief issue involved was the enactment of a literacy test. Mr. Marshall, in no uncertain language, vehemently opposed this effort to shut the door against worthy people, especially from southern and eastern Europe, whom persecution or benighted conditions in their ancestral homes deprived of much coveted educational opportunity. This opposition was vigorously pressed before the federal immigration commission, before committees of Congress and before successive Presidents. It was largely due to Louis Marshall's arguments that bills containing a literacy test were vetoed by President Taft on February 14, 1913, and twice by President Wilson, on January 28, 1915, and January 22, 1917, respectively, although in the latter case the bill was enacted by Congress over the President's veto.

The conduct of the campaign against the literacy test was not based upon rhetoric, but convincing arguments that our country's best interest underlay maintenance of our traditional policy were furnished, and subsisting methods of Americanization and assimilation, and their augmentation, were stressed. This is not the place to quote at length from his various effective utterances, despite the temptation to do so. Particularly valuable were his efforts at securing a suitable and effective exemption of religious refugees from the literacy test. In order to disarm Jewish opposition, proponents of this measure, notably Congressmen Burnett and Hays and Senator Lodge, disclaimed any desire to exclude religious refugees, but the exemptions they phrased were limited to cases of persons coming here *solely* to escape from religious persecution, and it was doubtful whether such clause would have admitted anyone, since all the immigrants desired to improve their economic and educational status here, too; and similar narrowly phrased exemptions in England had proved worthless.

While opposing all literacy tests for immigrants, as distinguished from applicants for naturalization, friends of reasonable immigration laws insisted that the exemption clauses proposed should be effective. Ordinary language for the test, instead of the difficult language of our Constitution (which was wholly unintelligible to the new arrival), was accordingly prescribed in the law, through our efforts, and a workable exemption of religious refugees adopted, which the Supreme Court has lately given effect to in the Waldman case (266 U. S. 113, 548). It was Louis Marshall who phrased this exemption as adopted, and its draftsmanship displays his characteristic masterly legal ability and knowledge of affairs all over the world. The obnoxious word "solely" was, of course, omitted, but, in addition, a comprehensive definition of religious persecution was adopted, to wit, "whether such persecution be evidence by overt acts or by laws or governmental regulations that discriminate against the alien or the race to which he belongs, because of his religious faith". The act expressly aimed at persecution "in the country of last permanent residence", so that the condition did not have to be limited to a particular place or district within the foreign country, and in view of difficulties of proof, its submission to the Secretary himself was authorized, and not merely to the petty officials conducting the star-chamber "Boards of Special Inquiry", where the ignorant alien was deprived of the benefit of legal advice and had no power to summon witnesses.

Of course, numerous additional objectionable expedients and provisions were suggested in this pre-war period, though the literacy test was then the chief proposed new restriction. I recall with particular pleasure a couple of incidents of this period, in which Louis Marshall figured actively. One involved the almost unprecedented result of defeating a conference committee report at the eleventh hour and ordering a bill back to a new congressional conference, after one house had already approved the same. Vol. 49 of the generally dry *Congressional Record* tells the tale. On Thursday, January 16, 1913, Chairman Burnett of the House Committee on Immigration presented a conference committee report on the immigration bill, in which a new clause had been inserted by the committee at the instance of the immigration authorities, not previously approved by either house, excluding subjects of any country issuing certificates of character who do not produce them to our immigration officials. The measure was at once forced through the House, and nobody outside of Congress knew of this important clause until the *Congressional Record* came to

hand the following Saturday. It was known that Italy issued such certificates, to bar criminals, but the immigration officials overlooked the fact that Russia did also, and that it would be a simple matter, in connection with Jewish persecution, arbitrarily to refuse certificates to the "people of the Book", and thus close even our asylum to these fugitives from persecution. In those days, moreover, we still honored in the observance the sanctified American principle of inalienable right of expatriation, and did not make admission to our shores dependent upon formal passport consent of the country of emigration. On Monday morning, January 20, every Senator had before him a terse and vigorous telegram of protest from Louis Marshall, in which this proposal was vigorously exposed, and soon after the Senate convened, Senator after Senator arose, beginning with Stone, O'Gorman, Gronna, La Follette and Root, regardless of party, and they so effectively combated Senator Lodge's defense of the conference committee report that Lodge himself finally moved to recommit and disagree with the report, and the clause was not heard about further for another decade.

Similar is the following incident in connection with the provision in the subsisting Act of 1917, with respect to exclusion of "persons likely to become a public charge" (under which most of the exclusions had taken place), which the House Committee in 1917 transferred from one section of the act to another, in order avowedly to avoid the Supreme Court decision in *Gegiow vs. Uhl*, 239 U. S. 3, limiting the bar to personal disabilities. As Louis Marshall and I agreed that the courts could not depart from the former construction of those identical words, if they were reenacted, though in a different place, and could not say how the old law had been thereby altered, we concluded to let this change pass without protest, especially as the alternative could have been a drastic new express limitation of far-reaching character. The event justified our course, and the courts ruled that, conceding an expressed intention on the part of Congress to change the old law, the same was nugatory in the absence of any new phraseology to indicate what change was intended.

The growth of nationalistic chauvinism, due to the war, and unheard of misery abroad, have been too much, however, for cherished American principles of policy, and despite the untiring efforts of Louis Marshall and his associates, brutal new laws have been enacted since the war, establishing quotas on national lines, and even quotas going back to the Census of 1890, deliberately discriminating in favor of so-called "Nordics." Nay, more, families have been disrupted in inhuman fashion by the law of our land, and passports viséd by our Government disgrace-

tully dishonored, on the faith of which unfortunates had left their homes and burnt all their bridges behind them. It has been due in large degree to the never-ceasing vigilance and untiring activity of Louis Marshall that these laws have been somewhat ameliorated, both by the law-making body and the courts. Unfortunately, however, as declared by one of the greatest statesmen of Europe, the war has changed all our prevailing ideas of the dictates of ordinary humanity! Such laws, and vicious registration-of-alien bills, have been scathingly denounced, and their enactment opposed, by enlightened men and women who have gladly placed themselves behind the banners borne by Louis Marshall.

In the cause of naturalization, Louis Marshall has been no less active as champion of the foreign-born. In the *Balsara* test case (180 F. R., 694 C. C. A.), a ruling was secured that vindicated the right of naturalization not merely of the Jews, but of many other persons of original Asiatic origin. Thanks to his untiring efforts, our Supreme Court has held that refusals of naturalization were reviewable "causes", and that no single judge's blunder or prejudices could erroneously deprive a qualified resident from becoming in name, as well as in fact, a citizen of this land of opportunity. (*Tatum vs. U. S.* 1926). He took the lead in fighting and demolishing illegal departmental instructions erroneously defining "residence" here, under which persons residing here were treated as non-residents because wives and children are detained abroad, generally by inhuman quota laws, and thus prevented from availing themselves of their rights even under existing laws of having wives and minor children join them here. He has also been the leader in the struggle for enlightenment for our foreign-speaking residents and safeguarded their right to read, speak, teach and be taught the language of their ancestral home, often the only one familiar to them. On the other hand, no one has been more emphatic and effective in promoting the study of our English vernacular among our foreign-born, and the promotion of methods for rendering them worthy, patriotic and religious, law-abiding citizens and residents of our beloved country. Nor has anyone rendered such valuable service as he has to ameliorate the condition of the "potential immigrant" abroad, whose hopes to enter our land have been despairingly abandoned.

When Louis Marshall accepted the chairmanship of the American Jewish Committee in 1912, he referred in fitting terms to the fact that his predecessor, Judge Sulzberger, would continue to aid in its valuable work, and he said: "We are all privates in the ranks!" No one can attempt adequately to gauge or describe Louis Marshall's personal, un-

known, unacknowledged incessant "service in the ranks" in innumerable cases and causes to thousands of persons, in aid of the "stranger within our gates." On his approaching seventieth birthday, world-wide hearty congratulations and good wishes will find utterance for one who continues to promote, with unabated vigor, judgment and skill, the true best interests of our beloved country and of our Jewish faith, but no one of our generation, here or abroad, deserves such good wishes on the part of the "stranger within our gates" as much as does the truly democratic, unselfish, brilliant and untiring president of the American Jewish Committee, who has achieved a new maximum of capacity for human endeavor!

INDEX

[NOTE: *As the book deals almost entirely with immigration to this country, all entries may be assumed to refer to the United States unless some other country is specified. (n) stands for footnote. Matter in brackets has been inserted by the indexer.*]

- Aaronsohn, Aaron, 248
 Abbott, Grace, 27, 292; ref. to works by, 285(n)
 Abinger, Lord, 114
 "Abjuratio Regni . . ." (Reville), alluded to, 110
 Abjuration of the realm and the right of asylum, 106, 111, 112, 113, 115, 116
 "Abstract of Thirteenth Census", ref. to, 282(n)
 "Abstracts of Reports of the Immigration Commission", ref. to, 276
 "Account of the Manners of the German Inhabitants of Pennsylvania" (Rupp), ref. to, 286; alluded to, 307 (n)
 Adams, John, 158, 290; on aliens, 322
 Adams, John Quincy, 122, 126, 304, 305, 311, 312, 313; on American immigration policy, 308, 315, 317; letter of Henry Clay to, 315; correspondence of, with Moritz von Fürstenwärther, 316-320
 Addams, Jane, 27, 82, 292; work by, alluded to, 294(n)
 Adler, Dr. Cyrus, 32; letter of President Wilson to, quoted, 86-87; disapproves proposed registration of aliens, 384
 Adler, Felix, 155
 "Administration of the Deportation Laws of the U. S.," by Reuben Oppenheimer, 417(n); review of, 418-420
 Africans, 152, 394, 395
 "After War Problems" (Johnston), quoted, 156-157
 Ah Fawn, case of, 142, 264
 Ah Yup, case of, cited, 392
 Aix-la-Chapelle, conference of, rights of man discussed at, 121; memorial by Robert Owen presented to, 123; slave traffic discussed at, 124-126; religious liberty aided by, 126, 128-129
 Akers-Douglas, Mr., Home Secretary, 91
 Alexander I, Czar, 122, 124, 125, 127, 128, 129; disapproves Robert Owen's theories, 123-124
 Alexander III, Pope, 107
 Alexander, Norman, work by, alluded to, 327(n)
 Algeciras, Congress of, 129
 Alien and Sedition Laws of 1798, 71, 116, 117, 118, 133, 159, 290, 315, 329, 341, 342, 343, 360, 390
 "Alien Legislative and the Prerogative of the Crown" (Haycroft), ref. to, 114 (n)
 Aliens, discussion on compulsory registration of, 40-43, 340-391; right of, to enter the U. S., 70-71, 72, 76-77; and right of asylum, 87-98, 99-120; rights of, and the development of commerce, 107; discrimination against, 134, 135, 143, 310(n), 327-329, 330(n); protected by treaties, 136; protected by Declaration of Independence, 158; in War of the Revolution, 173, 283, 322; statistics on, 179, 281-282, 284(n), 285, 287; opinions of "fathers" of U. S. in regard to, 321-323; rights of, in U. S., 327, 328, 331, 332, 333, 334, 335, 337, 410, 411, 412, 413, 415, 416, 418, 419; status of, in other countries, 328-329; rights of, in England, 330, 337; Michigan act for registration of, 330 and (n), 389-391; international conference on equal rights for nationals and, 338; cases in regard to rights of, 330, 331, 332, 333, 334, 335; laws on exclusion and expulsion of, 406-407; works on deportation of, reviewed, 417-420. *See also* Asylum, right of; Chinese Exclusion Laws; Deported aliens; Deportation; Immigrants; Immigration
 Aliens Act, British, discussion in House of Commons on, 87, 90-94, 100; American Act modeled upon, 87-89, 120; legislative history of, 89-94
 "Aliens Act and the Right of Asylum" (Sibley and Elias), cited, 76; ref. to, 101(n); alluded to, 107

- "Aliens and the Right to Work" (Chamberlain), ref. to, 334
- "Aliens under the Laws of the United States" (McClintock), alluded to, 327(n)
- Allen, William, 122
- Alliance Israelite Universelle, 423
- Alsations, the, 306
- "Amer. & Eng. Ency. of Law," ref. to, 101(n)
- American Bar Association, 337
- "American Bar Association Journal", ref. to, 327(n), 417(n)
- "American Commonwealth" (Bryce), cited, 132, 139-140; quoted, 175-176, 247, 294-295; alluded to, 290(n)
- "American Diplomacy" (Moore), ref. to, 119(n)
- American Economic Association, 293
- "American Economic Review", ref. to, 280(n), 310
- American Federation of Labor, attitude of, toward proposed registration of aliens, 367, 368, 370, 372, 383, 385, 386, 387, 388
- "American Hebrew", ref. to, 232(n), 431(n)
- American Historical Association, Reports of, ref. to, 117(n), 285(n)
- "American Historical Review", ref. to, 117(n), 280(n), 287(n), 307(n)
- "American Jew as Patriot, Soldier and Citizen" (Wolf), 243
- American Jewish Committee, 1(n), 32, 64, 79, 89, 165, 172, 276, 348, 389, 399(n), 433, 437
- "American Jewish Year Books", ref. to, 129, 431; alluded to, 241
- "American Law Review", ref. to, 99(n), 136, 138, 357, 360, 392
- "American Naturalization and the Chinese" (Wigmore), ref. to, 136, 392
- "American People, The" (Low), ref. to, 282(n); alluded to, 290(n)
- "American Political Science Review", ref. to, 138
- "American Review"; ref. to, 66(n)
- American, Sadie, 298
- "American Society of International Law", ref. to, 118(n), 119(n); alluded to, 136
- "American Spirit, The" (Straus), cited, 119(n)
- Americanization work, by Government for the immigrant, 19-20; Jewish efforts in, 19, 242, 243, 247, 297-299, 424, 428, 429, 431; need for work in, 86; agencies for, 174-175, 292-293, 294, 360, 361. *See also* Assimilation
- "Americans by Choice" (Gavit), cited, 152; alluded to, 361
- Amsterdam, Holland, 306
- Anderson, F. M., ref. to works by, 117(n), 360
- Angell, James B, 226; ref. to work by, 288(n)
- "Annals of American Academy of Political and Social Sciences", ref. to, 131(n), 144, 299
- Antin, Mary, work by, cited, 70-71
- Anti-Semitism, 154
- Appeals, necessary for improvement in hearing of, 3
- Argentine Republic, 423
- Arizona Alien Act, 76
- Armenia, 151
- Armenians, 85, 289, 357, 398
- Arnold, Matthew, quoted, 26, 162
- Arrowsmith vs. Brucker, case of, 414
- Arrowsmith vs. Voorhies, ref. to case of, 330(n)
- Arthur, President, on proposed Chinese exclusion law, 349-350, 353, 390
- Ashkenazy, Prof., 238
- Asiatics, inadmissible under Immigration Act of 1924, 151-152; racial discrimination against, 159. *See also* Chinese Exclusion Laws
- "Asile, L', Interne devant le Droit International (Tobar y Borgogo)," ref. to, 107(n)
- Asquith, [H. H.], 115; quoted, 92
- Assimilation of immigrants, 25. *See also* Americanization
- Aswell, J. B., bill by, for registration of aliens, 366, 367, 386; quoted, 376-380
- "Asylrecht, Das, im Alterthum und Mittelalter" (Fuld), alluded to, 103
- Asylum, right of, 9, 78-98, 183, 315, 357; traditional policy of U. S., 78, 79, 83, 88, 96, 97, 98, 99, 100, 101, 116, 117, 118, 119, 120, 323, 329; discussion in British Parliament on, 78-79, 89-94, 95; affected by literacy test, 82-83, 84, 87, 89, 94; affected by proposed quota law, 85; English attitude toward, 89-94, 95, 96, 100, 102, 103, 106, 109, 110, 111, 112, 113, 114-115, 116; legal decisions in regard to, 97-98, 101-102, 119; and the alien, 99-120; development of, from antiquity, 102-109; biblical attitude toward, 103-104, 108, 155; in ancient Greece and Rome, 104-105; in me-

- dieval times, 105, 109; under the Roman Catholic Church, 105, 106, 107; and the institution of slavery, 106; American discussion with England on, 114; bibliography on, 360. *See also* Aliens
- Atkinson, Edward, ref. to, 173
- "Atlantic Monthly", ref. to, 143, 284(n), 359; alluded to, 244
- Australia, 291(n)
- Austria, 128, 129, 130, 172, 289, 361, 404. *See also* Austria-Hungary; Austro-Hungarians
- Austria-Hungary, 229. *See also* Austria
- Austro-Hungarians, 150, 151
- "Auswanderung und Auswanderungspolitik in Deutschland" (Phillipovich), ref. to, 302(n), 310(n)
- Balch, Emily, work by, cited, 292, 293
- Baldwin, Governor, 82
- Balfour, Arthur, 94, 115; on admission to England of persecuted Russian Jews, 90, 91
- Ballagh, work by, alluded to, 287(n), 307(n)
- Balsara case, 436
- Baltimore, 19, 47, 180, 184, 241, 309
- Bancroft, George, quoted, 157, 240, 282-283; alluded to, 302(n)
- Barker. *See* Ormichund *vs.* Barker
- Barnett, Ralph, 67
- Baron de Hirsch Fund, 18, 19, 175, 294, 297, 298, 343, 423, 424, 427, 428
- Baron de Hirsch Trade School, 242
- Basle, 302, 303 and(n)
- Bayard, [T. F.], Secretary of State, against religious discrimination, 404-405
- Becket, Thomas, 112
- Belgium, 126, 361, 401
- Belper, Lord, 94
- Bentham, Jeremy, 122
- Berenson, Bernard, 248
- Berlin, Congress of, 129
- Bernhard, Duke of Saxe-Weimar, 305
- Bernheim, A. C., work by, alluded to, 107, 117; quoted, 108; cited, 156, 327
- Bernheimer, Dr. Charles S., work by, alluded to, 244
- Bernstein, Fischel, 56
- Bernstein, Herman, 228
- Bernstorff, [Count von], 129
- Beth-El Congregation, New York City, 299
- Bible, right of asylum in, 103-104, 108, 155
- Birthrate, immigration and, 291 and(n)
- Bischoffsheim, Clara. *See* Hirsch, Clara de
- Bischoffsheim, Raphael, 423
- Black, Olcott, Gruber & Bonyng, law firm, 358
- Blease bill for registration of aliens, 363, 365, 366, 389; quoted, 373-374
- Bloch, Dr. Josef S., ref. to work by, 239
- "B'nai B'rith News", ref. to, 232(n)
- Board of Delegates of Union of American Hebrew Congregations, 64, 79, 89, 97, 165, 172, 298, 348. *See also* Union of American Hebrew Congregations
- Board of Home Missions of the Presbyterian Church in the U. S., 79
- Boards of Special Inquiry, 46, 51, 56, 57, 59, 60, 170, 188, 189, 434; and legal rights of immigrants, 2-3, 6, 59, 60; improvement suggested in personnel of, 5, 60, 164; exclude immigrants unjustly, 5-6; should keep full records, 13
- Boas, Prof. Franz, 27, 160
- Bohemians, 291
- Bonaparte, [Charles Joseph], Attorney-General, on value of immigration, 173-174
- Bonaparte, Napoleon, 114
- Bond, Phineas, 310(n)
- Bonds, posting of, by immigrants, 11-12, 13, 20, 58, 76, 171, 195-196, 309
- Borchard, Prof., work by, alluded to, 327
- Boston, 19, 47, 143, 174, 180, 184, 235, 241, 256, 359
- Boswell, Helen Varick, 299
- Bouvé, Clement L., review of work by, 406-407
- Box, Congressman, 28; participates in hearing on proposed registration of aliens, 345, 346, 347, 353, 354, 357
- Brandeis, Justice, 274(n)
- Bremen, 17
- Bressler, David M., 228, 346
- Brewer, Justice, 411, 412
- "Brief Statements of the Investigations of the Immigration Commission" . . . , 276
- Brink *vs.* Stratton, ref. to case of, 403
- Broglie, Maurice de, 126
- Brooklyn, 19

- Brooks, John G., 361
 Brougham, Lord, 114
 Brown, Justice, on inviolability of treaties, 272-273
 Browne *vs.* Zurbrick, ref. to case of, 416, 419
 Brucker, Gov. Wilbur M., letter to, urging veto of proposed Michigan alien registration law, 389-391.
 Brussels, 423
 Bryce, James, 26, 115, 182, 233; on rapid Americanization of the immigrant, 27, 160, 175-176, 247, 294-295; on admission to England of persecuted Russian Jews, 92; work by, cited, 132-133, 139-140; alluded to, 290(n)
 Bucharest, Congress of, 129
 Budapest, 423
 Bulgarians, 176
 "Bulgarians of Chicago" (Abbott), ref. to, 285(n)
 "Bulletin of Bureau of Labor," ref. to, 294(n)
 Burlingame Treaty, 138, 140, 265, 267, 269, 350, 353, 393
 Burmese, 85, 392, 395
 Burnett, Congressman, 82, 83, 84, 433
 Burns, W. J., 387
 Butler [Pierce], ref. to work by, 115(n)
 Byrne, work by, alluded to, 285(n)
 Bushee, work by, alluded to, 285(n)
- Cable, Assistant Secretary of Commerce and Labor, 168, 179
 Cable, Congressman John L., participates in hearing on proposed registration for aliens, 345, 346, 356; bill by, for registration of aliens, 366, 367, 372; quoted, 374-376
 Cahan, Abraham, work by, alluded to, 244
 California, 45, 66, 70, 71, 132, 136, 139, 140, 142, 145, 242, 243, 264, 330(n), 332, 390, 391, 392, 415, 432
 Callender, Prof., works by, cited, 280; alluded to, 285(n)
 Campbell, Chief Justice, on right of asylum, 101, 114
 Canada, 24, 302(n), 409; case regarding right of entry of laborers from, 44, 45
 Canadians, 151, 153, 392
 Capen, work by, alluded to, 283(n)
 Capodistras, 127, 129
 Cardozo, Judge [Benjamin N.], 32, 334
 Carolinas, the, 157, 285
 Carr, John Foster, 297
 Carr, Wilbur J., letter from, to Hon. Samuel Dickstein, quoted, 34-35
 Carter, James C., 411
 Carvallo *vs.* Cooper, ref. to case of, 334
 Castlereagh, Lord, 123, 124, 125, 127, 129; quoted, 130
 Castro case, 119
 Catholic Encyclopedia, ref. to 107(n), 285(n)
 Catholics, 234, 285; affected by Immigration Law of 1924, 79, 152, 154, 235
 Caucasians, 397
 "Causes of Earlier European Immigration to the U. S." (Page), ref. to, 289(n), 316(n)
 "Causes of Race Superiority" (Ross), ref. to, 144
 Cecil, Lord Hugh, 115; quoted, 92-93
 Celler, Congressman, 365
 Central America, 24
 "Century of Population Growth", ref. to, 284 and(n), 291, 302(n)
 Chamberlain, Houston Stewart, 154
 Chamberlain, J. P., ref. to work by, 334
 Chandler, Representative, 235
 Chandler, Senator, 426
 "Charities", ref. to, 285(n)
 Charlemagne, 105
 Charles II, of England, 115, 116
 Chazars, the, 236-237
 Cheung Sum Shee *vs.* Nagle. *See* Chung Sum Shee *vs.* Nagle
 Chew Heong, case of, cited, 35
 Chicago, 19, 86, 180, 184
 Chicago World's Parliament of Religion, 155
 Children, admission of, 12-13, 57-58, 192-194
 Chin Yow, ref. to case of, 274(n), 329
 China, 78; treaties with, regarding immigration, 264-265, 266-269. *See also* Chinese; Chinese Exclusion Laws
 Chinese, discriminatory legislation against 1, 132, 133, 134, 135, 136, 137, 139, 140, 145(n), 146, 159, 333; registration of, 35, 253, 254, 255, 259, 260, 261, 342, 350, 353, 358, 359; President T. Roosevelt demands more humane treatment for, 146; naturalization of, 392, 393, 394, 395, 397. *See also* Chinese Exclusion Laws; Chinese Immigration Laws
 Chinese Exclusion Laws, 35, 38, 45, 290-291, 329, 330, 331, 335, 340, 341, 342, 348, 350, 355, 356, 369, 385, 389, 390, 394, 408, 410, 411; violate treat-

- ies, 22, 24, 28, 30-31, 141, 142, 146, 159, 264-265, 269, 270, 271, 329, 350, 353; cases relating to, 35, 38, 45, 71-72, 76, 132, 142, 255, 258, 264, 266, 274(n), 275, 329, 330, 331, 333, 336, 402-403, 411, 412, 415; history of, 138, 140, 141, 142, 143; corruption in enforcement of, 143, 256, 356-357, 358-360; effects of, 144, 145; unfairness of, 144, 145; Oscar S. Straus on, 146-147; President T. Roosevelt on, 263; diplomatic history of, 263-274; President Arthur on, 349-350, 353, 390. *See also* Chinese Immigration Laws; Coolies, Chinese
- "Chinese Exclusion Policy and Trade Relations with China" (Kohler), ref. to, 252
- "Chinese Immigration" (Coolidge), ref. to, 358
- Chinese Immigration Laws, administration of, 251-262; harsh administration of, denied, 251-252; Max J. Kohler charges harsh administration and illegality of, 252-260; violate treaties, 253, 257, 258; rigor and unfairness of, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262. *See also* Chinese Exclusion Laws
- Choate, Joseph H., 411
- "Christianity and the Race Problem" (Oldham) alluded to, 154, 155
- Chung Sum Shee *vs.* Nagle, case of, cited, 38, 274(n)
- Chung Toy Ho, case of, cited, 38
- Church, the, and the right of asylum, 105, 106, 107, 112
- Churches, right of asylum and, 105
- Chy Lung *vs.* Freeman, case of, cited, 390, 415
- Clara de Hirsch Home for Working Girls, New York, 424
- Clark, Jane, work by, cited, 408, 410; reviewed, 417-418
- Clarkson, Thomas, 123, 124, 125
- Clay, Henry, on right of asylum, 315
- Clemenceau, [Georges], 127; on status of Jews in Poland, 239
- Cleveland, Grover, 82, 100, 176, 181, 233, 290; on religious discrimination, 404
- Cleveland, Ohio, 19
- Cobb, S. H., work by, ref. to 286(n); alluded to, 307(n)
- Coke, Lord, quoted, 135
- Coleridge, Lord, 98
- "Colonial Immigration Laws" (Proper), alluded to, 158, 283(n); cited, 285
- Colt, Judge, 392, 397
- Colt, Senator, 25, 37, 158, 236
- Coman, work by, alluded to, 290(n)
- Commons, Prof., 282; work by, alluded to, 285(n)
- Commons, House of, 78; discussion in, on admission to England of Russian-Jewish refugees, 89-94
- "Commentaries on the Constitution" (Story), quoted, 403
- "Compulsion of Subjects to Leave the Realm" (Craies), ref. to 112, 114(n), 285; alluded to, 116
- "Confederation of Europe, The" (Phillips), cited, 129
- Congress, 65, 71, 72, 75, 76, 119, 235, 335, 336, 365, 385, 387, 389, 400, 401; immigration regulation under consideration by, 8, 19, 23, 24, 25, 27, 28, 29, 40-43, 72, 83, 315, 322, 408, 410, 413; hearings before, on quota laws, 32-45, 150; hearings before, on literacy test, 82, 83, 84, 85, 87, 88, 89, 99, 119; hearings before, on registration of aliens, 340-362; members of, disapprove proposed registration of aliens, 369-373; Louis Marshall combats restrictionist measures proposed by, 433-435
- "Congressional Record", quoted, 37; ref. to, 84, 365, 366, 434
- Connecticut, 158
- Constantine the Great, 105
- "Constitutional History of England" (May), quoted, 109-110
- "Constitutional Limitations" (Cooley), quoted, 403
- "Contemporary Opinion on the Virginia and Kentucky Resolutions" (Anderson), ref. to, 117(n), 360
- Contract labor law, 1, 6, 8, 10, 75, 179, 276
- Cooley, Judge, work by, quoted, 403
- Coolidge, Mrs., ref. to work by, 358
- Coolidge, [Calvin], 150, 162
- "Coolies and Privileged Classes" (Kohler), ref. to, 142(n)
- Coolies, Chinese, immigration laws concerning, 251, 253, 254, 255, 257, 259, 260, 263, 264, 265, 267, 268, 271, 274, 329, 349, 353. *See also* Chinese Exclusion Laws
- Cooper. *See* Carvallo *vs.* Cooper
- Copeland, Senator Royal S., 365, 366,

- 386; disapproves proposed registration of aliens, 370
- Council of Jewish Women, 201, 346; Americanization work by, 296-299
- Cox, J. Charles, work by, cited, 110, 111-112
- Craies, W. F., work by, ref. to, 112(n), 114(n), 285; alluded to, 116
- Cripps, Mr., quoted, 93-94
- Croatians, 176, 291
- Cuba, 24, 36, 352, 353, 390
- Cullen, Judge, quoted, 403-404
- Curtis, George William, 131, 149
- Cushing, Caleb, decision by, on rights of Indians, 396
- Cutler, [Harry], 167
- Damascus, 78
- Danahy, Louis, 432
- Daughters of the American Revolution, 297
- Davidson, Charles Stewart. *See* Grant, Madison and Davidson, Charles Stewart
- Davis, Secretary, 28, 365, 366, 371, 372, 383
- "Day, The", quoted, 369-373
- Declaration of Independence, 70, 131, 132; violated by Immigration Law of 1924, 149; race discrimination contrary to, 131, 158, 394, 398; and right of asylum, 158
- Deffenderffer, work by, alluded to, 307(n)
- Delaware, 180
- Denby, Congressman, 88, 89, 94
- Denison, Judge, on legal rights of aliens, 416, 419-420
- Deportation, 171, 342, 343, 344, 350, 351, 352, 355, 356, 368-369, 411, 418; immigrant should be given ample notice of, 13-14; under quota law, 23; treatise on laws relating to, 406-407, 417, 420; too rigorous enforcement of laws in regard to, 408-416; statistics concerning, 408, 409, 410, 412, 413, 416, 425; congress considering more drastic laws on, 408, 410; cases cited in regard to, 410, 411, 416, 419; legal rights of aliens disregarded in, 412, 413, 416; books on, reviewed, 417-420. *See also* Aliens; Exclusions; Immigration
- "Deportation of Aliens from the United States to Europe" (Clark), cited, 408; reviewed, 417-418
- Deported aliens, bill allowing reapplication for admission of, 39-40
- "Deutsch Amerikanertum vor 100 Jahren" (Lohr), alluded to, 307(n)
- "Deutsche, Der, in Nord Amerika" (von Fürstenwärther), alluded to, 286(n); cited, 300
- "Deutsche Rundschau", ref. to, 107(n)
- Dexter, F. B., work by, alluded to, 284
- Dickstein, Congressman Samuel, 42, 43, 45, 414; participates in hearing for amelioration of quota laws, 33, 39, 43; letter to, on invalidation of passports by Immigration Act of 1924, 34-35; immigration bill by, 37, 42, 45; disapproves proposed registration of aliens, 372
- "Digest of Immigration Laws and Decisions", alluded to, 4, 63
- "Digest of International Law" (Moore), alluded to, 136.
- Dilke, Sir Charles, 91, 94, 115
- Dillingham, Senator, 25, 82, 85, 159, 235, 236
- Dillingham Bill, 348
- Dillingham-Burnett Immigration Bill, 78, 79, 81, 84, 87, 94
- "Diplomatic Protection of Citizens Abroad" (Borchard), alluded to, 327
- Disconto Gesellschaft *vs.* Umbreit, ref. to case of, 334
- "Discovery and Colonization of America and Immigration to the United States" (Everett), quoted, 185; cited, 283
- "Discussions in Economics and Statistics" (Walker), ref. to, 288(n), 291(n)
- Distribution of immigrants, 16, 17, 19, 82; Jewish agencies work to aid in, 17-18. *See also* Jewish Immigrants
- "Documentary History of the Constitution," ref. to, 283(n)
- Dohm, [Christian Wilhelm], 128
- Doylestown, Pa., 18
- Dutch, the, 282, 284(n). *See also* Holland; Netherlands
- "Early Immigration, The, and the Immigration Question of Today" (Learned), alluded to, 285(n)
- Eastern Council of Reform Rabbis, 78(n)
- Eddy, Sherwood, 385, 386
- "Editorial Review", ref. to, 46(n)
- "Education in Russia" (Simkhovitch), ref. to, 206

- Educational Alliance, New York, 19, 86, 175, 431
- Educational disabilities, of Roumanian Jews, 224-228; of Russian Jews, 203-224, 298
- "Educational Review", ref. to, 206
- Edward II, King of England, 111
- Eickhoff, work by, alluded to, 307(n)
- Eliot, Charles W., 79, 81, 154, 176, 181, 233, 235; opposes literacy test for immigrants, 82; correspondence of, with Max J. Kohler on immigration of unaccompanied males, 275-279
- Elizabeth, Queen of England, 113
- Elkus, Abram I., 32, 54, 67, 69, 348, 353, 400, 433
- Elliott's "Debates", ref. to, 117(n), 360
- Ellis Island Commission of 1903, 2, 62
- Emigration, regulation of, 301, 302, 303, 304, 305, 306, 310(n), 316
- "Emigration and Immigration, Legislation and Treaties", alluded to, 336
- "Emigration Conditions in Europe", ref. to, 200
- "Emigration from the United Kingdom to North America" (Johnson), ref. to, 116(n)
- Emmot, Mr., quoted, 94
- Enforcement of the Alien and Sedition Laws" (Anderson), ref. to, 117(n), 360
- Engel *vs.* O'Malley, ref. to case of, 433
- England, 22, 30, 87, 128, 130, 186, 203, 285, 302(n), 307, 328, 330, 337, 401, 433; admission to, of victims of Russian persecution, 89-94; right of asylum in, 100, 102, 104, 106, 109, 110, 111, 112, 113-115, 116, 357; efforts of, to abolish slave traffic, 124-126; composed of mixed stock, 156-157; enriched by immigration, 156. *See also* Great Britain
- English, the, 153, 240, 291
- "Estimate of Population in the American Colonies" (Dexter), alluded to, 284
- "Ethnic Factors in the Population of Boston" (Bushee), alluded to, 285(n)
- Europe, statistics on illiteracy in, 361
- Europe, eastern and southern, 150, 152, 160, 176, 177, 182, 234, 235, 280, 433
- "European Settlements in America" (Burke), cited, 285
- Everett, Edward, quoted, 185; work by, cited, 283; ref. to, 300, 308, 311, 313, 314
- Exclusions, increase in, 4, 5, 9, 12; law regarding, 7, 8, 9, 10, 11, 15; and assisted immigrants, 8-10; political refugees should be exempt from, 15; statistics on, 47, 48, 49, 54, 72, 80; due to unfavorable industrial conditions, 68, 70; number of Jews among, 80, 165-166, 167, 169; appeals concerning, 167, 169, 171; treatise on laws relating to, 406-407. *See also* Deportation; Immigrants; Immigration
- Extradition and the right of asylum, 108-109, 119
- Fagley, *See* Juniata Limestone Co. *vs.* Fagley
- Fairchild, Henry Pratt, work by, cited, 281; quoted, 282; alluded to, 283(n)
- Families, separated by quota law, 37-39
- Farrington *vs.* Tokushige, ref. to case of, 334
- Faust, A. B., work by, ref. to, 284(n), 302(n), 303(n); alluded to, 287(n), 290(n)
- "Federal and State Constitutions . . ." (Poore), ref. to, 116(n)
- "Federated Press", ref. to, 364
- Field, Justice, 411; quoted, 71
- Finlay, Sir Robert, 91, 115
- Finns, 289
- Finot, Jean, work by, alluded to, 153
- "First Century of the Republic" (Walker), alluded to, 285(n), 294(n); ref. to, 291(n)
- "First Universal Races Congress", 155
- Fishberg, Dr. Maurice, ref. to work by, 236
- Flexner, Dr., 248
- Flom, work by, alluded to, 285(n)
- Pong Yue Ting, case of, 330, 341, 411
- Ford, Henry, 154
- Ford, Worthington C., work by, alluded to, 314; ref. to, 360
- Fosdick, Raymond B., 361; work by, alluded to, 285(n)
- Foster, Charles, Secretary of Treasury, intervenes in behalf of Russian Jewish refugees, 96-97, 426.
- Foster, John W., ref. to work by, 143, 359
- "Founders of the Republic on Immigration, Naturalization and Aliens", (Grant and Davidson), criticism of, 321-323
- Fram, Rabbi Leon, 389
- France, 36, 124, 128, 130, 186, 203, 289, 361, 401. *See also* French, the

- Frank, Eli, 32
 Franklin, Benjamin, 322; on indentured servants, 286-287
 Freeman. *See* Chy Lung *vs.* Freeman
 French, the, 153, 284(n), 285, 291, 310.
See also France
 "French Blood in America" (Fosdick), alluded to, 285(n)
 Fuld, Dr. Ludwig, alluded to, 103; ref. to, 104(n)
 Fuller, Chief Justice, 273, 411
 Fürstenwärther, Moritz von, investigation by, of American immigration, 286, 300-315; correspondence of, with John Quincy Adams, 316-320
 Gagnern, Baron von, 300, 301, 303 and (n), 304, 314, 317; and an early European investigation of American immigration, 300-320
 Galicia, 229, 423
 Galveston Committee, 175, 179
 Galveston, Jewish Immigrants' Information Bureau at, 17, 18, 86, 202, 241, 297, 344, 345, 346, 347
 Gardner, Congressman, 82, 87, 88, 89
 "Gastfreundschaft im Alterthum, Die" (von Ihring), alluded to, 107
 Gavit, John P., work by, cited, 152; alluded to, 361
 Gaynor, [William J.], 181
 Geary Law, 141, 253, 254, 340, 351.
See also Chinese Exclusion Laws
 Gegiow, Ali, case of, 66, 67, 274(n), 336, 435
 Geiser, Prof., work by, ref. to, 286, 287(n); alluded to, 307(n)
 Gentz, Friedrich von, 122, 127, 128
 George *vs.* Portland, ref. to case of, 334
 Georgia, 157, 285
 German American Historical Society of Illinois, Yearbooks of, ref. to 300(n), 307(n)
 "German and Swiss Settlements of Colonial Pennsylvania" (Kuhns), alluded to, 307(n)
 "German Element in the United States" (Faust), ref. to, 284(n), 302(n); alluded to, 290(n)
 German immigrants, 300, 301, 307 and (n), 308, 309-310 and (n), 318; early European investigation concerning, 300-315; agencies for help of, 296, 307 and (n)
 "German Immigration into Pennsylvania through the Port of Philadelphia" (Deffenderffer), alluded to 307(n)
 German Society of Philadelphia, 307
 Germans, 153, 157, 159, 174, 176, 240, 282, 284(n), 285, 286, 288; valuable immigrants in England, 156
 Germany, 30, 127, 128, 150, 186, 203, 286, 289, 302 and (n), 303, 305, 310(n), 311, 314, 316, 317, 318, 401
 "Geschichte der Deutsche in Staate New York" (Kapp), alluded to, 307(n)
 "Geschichte der Deutschen Gesellschaft von Pennsylvania" (Seidensticker), alluded to, 307(n); ref. to, 312
 Ghent, Treaty of, 125, 126
 Gibbons, Cardinal, 82
 Giddings, J. R., 115(n), 131
 Gilbert, Charles K., 385, 386
 Ginzberg, Louis. *See* Toy and Ginzberg
 Gobineau, Count, work by, cited, 154
 Goldburg, Mr., on educational restrictions on Jews in Russia, 216-224
 Goldenwieser, E. A., ref. to work by, 285(n)
 Goldfogle, Congressman, 87
 Goldsborough, Governor, 82
 Gompers, Samuel, 367, 368, 385; disapproves proposed registration of aliens, 387
 Gordon, Major Evans, 94
 Gordon, George A., 338
 Gottlieb case, alluded to, 42, 44
 Grant, Madison, 154
 Grant, Madison, and Davidson, Charles Stewart, criticism of book by, 321-323
 Great Britain, 150, 286, 289, 307. *See also* England
 "Great Jewish Invasion" (Hendrick), ref. to, 232
 Greece, 22, 26, 78, 150, 156, 161, 162; right of asylum in, 104-105
 Greek-Turkish exiles, 357
 Greeks, 150, 153, 240, 291
 Green, William, 386; disapproves Alien Registration bill, 367-368
 Gregory XIV, Pope, 107
 Gresham, Secretary, 352
 Griggs, Attorney General, 263
 Gronna, Senator, 435
 Gue Lim, Mrs., case of, cited, 38, 258, 275
 "Guide to the Manuscript Material relating to American History in Ger-

- man State Archives" (Learned), alluded to, 302(n)
 Gulick, Rev. S. L., 161
- Halsbury, Lord Chancellor, 89
 Hamilton, Alexander, 174, 322, 390
 Hand, Judge Augustus N., 162, 385, 386
 Hand, Judge Learned, 69
 "Handwörterbuch der Staatwissenschaft", ref. to, 310(n)
 Hanford, Judge, 411
 Hardenberg, Prince, 127, 128
 Harding, [Warren G.], 28, 29, 234
 Harmon, Judson, 82
 "Harper's Weekly", ref. to, 295(n)
 Harris, Acting Commissioner General, 363
 Harris, A. W., 82
 Harvard University, 163
 Hastings "Encyclopedia of Religion and Ethics", cited 103
 Hawaiians, 392
 Hawkesbury, Lord, 114
 Hay, [John], 28
 Haycroft, ref. to work by, 114(n)
 Hayes, Congressman E. A., 83, 433
 Hayes [Rutherford], 140, 159
 Head tax, 1, 4, 15, 16, 20, 178
 "Hearings before the Committee on Immigration and Naturalization", 83
 "Hearings before House of Representatives Committee on Immigration", ref. to, 78(n)
 Hebrew Agricultural and Industrial Aid Society, 294
 Hebrew Benevolent Society of New York, 298
 Hebrew Sheltering and Immigrant Aid Society, 86, 169, 175, 294, 425
 Hebrew Technical School, 242
 Hendrick, Burton, 154; book by, on the Jewish immigrant, criticized, 232-250
 Hennighausen, L. P., work by, alluded to, 307(n)
 Henriques, [H. S. Q.], work by, alluded to, 114
 Henry VIII of England, 113
 Hillman, Sidney, disapproves proposed registration of aliens, 387-388
 Hindus, 85, 336, 410
 Hirsch, Baron de, 97, 238, 427; centennial anniversary of, 423-424
 Hirsch, Clara de, 423, 424
 Hirsch, Jacob von, 423
 Hirsch, Joseph von, 423
 "Historical Development of the Poor Laws of Connecticut" (Capen), alluded to, 283(n)
 "History of Emigration from the United Kingdom to North America" (Johnson), cited, 301(n)-302(n)
 "History of the German Society of Maryland" (Hennighausen), alluded to, 307(n)
 "History of Immigration Investigation and Legislation," quoted, 290, 321-323
 "History of the Law of Aliens from the Standpoint of Comparative Jurisprudence" (Bernheim), alluded to, 107; cited, 118, 156, 327
 "History of the United States" (McMaster), cited, 310(n)
 Hitchcock, U. S. Commissioner, 358
 Holcombe, Chester, 142, 266, 267, 270, 271; on Chinese exclusion laws, 269-270
 Holland, 126, 128, 130, 304, 305, 310(n).
 See also Dutch, the; Netherlands
 Holmes, Justice, 274(n); quoted, 68
 Hope, J. F., 93
 Hopkins. *See* Yick Ho vs. Hopkins
 Hourwich, Isaac A., 228; work by, alluded to, 81; ref. to, 283(n), 291(n), 294(n)
 Howells, William Dean, on value of immigration, 27
 Hughes. *See* Techt vs. Hughes, case of
 Hughes, Charles Evans, 162, 432; decision by, on rights of aliens, 333
 Hull House, 86
 "Human Brotherhood as Taught in the Religions Based on the Bible" (Kohler), 155
 Humboldt, Baron William von, 127, 128
 Hungarians, 153, 393, 398
 Hunt, [Gaillard], ref. to work by, 360
 Huxley, Prof., 397
- Ihering, Rudolf von, work by, alluded to 107
 Illinois, 180, 240, 242, 309
 Illiteracy among immigrants, statistics on, 176-177, 288, 291, 293, 361. *See also* Illiteracy of Jewish Immigrants; Immigrants
 Illiteracy of Jewish immigrants, 200-228, 344, 351; statistics on, 200-201, 202, 215, 244; cause of, 203, 229. *See also* Jewish immigrants; Roumania; Russia

- Immigrants, legal rights of, 1-15, 55, 56, 57, 59-60, 63, 64, 66-77, 168, 170-171, 179; legal decisions in regard to, 2, 3, 5, 6, 42, 44, 48, 55, 66, 67, 69, 70, 71, 73, 74, 85, 185, 331, 332, 336; money test for, 9, 10, 52, 53, 56, 58; posting of bonds by, 11, 12, 13, 20, 58, 76, 171, 195-196, 309; should be given ample warning of deportation, 13; medical examination of, 14-15, 20, 29, 48, 60, 73, 166, 171, 190, 191; government assistance to, on arrival, 15-19; distribution of, 16, 17, 19, 175, 178-179, 180, 345; agencies for Americanization of, 19-20, 174-176, 283, 286, 287, 292-293, 294, 297, 360, 361; assimilation of, 25, 27; statistics concerning, 75, 288, 291, 293, 361; rapid response by, to better environment, 144, 160-161, 181, 247; Theodore Roosevelt opposed to race discrimination of, 149-150; occupations of, 293; Louis Marshall's work in behalf of, 430, 431; Gov. Hughes' Commission to improve conditions of, 432. *See also* Aliens; Boards of Special Inquiry; Chinese Exclusion Laws; Deportation; Exclusions; German immigrants; Illiteracy; Immigration; Jewish immigrants; Medical examination of immigrants; Quota law
- "Immigrants in Cities" (Goldenwieser), ref. to, 285(n)
- Immigrants' Protective League, Chicago, 86
- Immigration, recommendations for better regulation of, 1-21; early policy on, regulative not restrictive, 1, 280; restriction of, and treaty rights, 25, 30; statement before House Committee on, on Quota laws, 32-45; responsive to local economic conditions, 68, 81, 282, 288; international law on, 76; and the right of asylum, 78-98; restriction of, aimed at Catholics rather than at Jews, 79, 152, 154, 235; distribution of, 82, 240; "old" and "new" type of, 86, 150, 152, 160, 162, 172, 174, 182, 186, 230, 235, 280, 281, 291; discriminatory legislation on, opposed by President Wilson, 86-87; regulation of, by Japan, 143-144; race discrimination and, 149-163; value of, 153, 156-157, 173, 176, 180, 184, 283(n), 285, 286, 288, 290, 295, 322; movement for restriction of, 172-185, 234, 290-291; liberal policy on, traditional, 174-175, 181, 183, 185, 290, 321, 322, 323; Charles W. Eliot's views on, 275-279; some aspects of, 280-295; colonial regulation of, 285; differing streams of, 287-288; motives for, 288-289; and the birth-rate, 291 and (n); an early European investigation of, 300-320; John Quincy Adams on American policy relating to, 308, 315, 317, 318. *See also* Aliens; Asylum, right of; Chinese Exclusion Laws; Deportation; Exclusions; Immigrants; Immigration laws; Indentured servants; Literacy test; Quota laws; Race discrimination
- "Immigration" (Fairchild), cited, 281; ref. to, 282(n); alluded to, 283(n)
- Immigration Act of 1917, 400
- "Immigration and the Commissioners of Emigration of . . . New York" (Kapp), ref. to, 286(n), 288(n); alluded to, 290(n); cited, 302(n)
- "Immigration and Labor" by Isaac A. Hourwich, 81; ref. to, 283(n), 291(n), 294(n)
- Immigration Commission, 78, 79, 80, 81, 86, 100, 159, 160, 164, 165, 166, 167, 172, 174, 180, 181, 182, 183, 187, 188, 200, 235, 276, 280, 281, 288, 292, 316, 346; recommendations to, 1-21; ref. to Reports of, 1(n), 69, 101(n), 281(n), 283(n), 289(n), 294(n), 407, 431
- "Immigration Investigation and Legislation" (Page), ref. to, 316
- Immigration Law of 1924, discussion on hardship worked by, 33-39; violates Declaration of Independence, 149; racial discrimination under, 150, 153; will separate families, 150, 151; Asiatics inadmissible under, 151, 152, 162; un-American, 163. *See also* Quota law
- Immigration laws, need amendment, 3; decisions on, should be compiled, 3-4; information on, needed abroad, 4-5; to be construed in favor of individual liberty, 6, 49, 69, 73-74, 164; in regard to those likely to become public charges, 6, 7, 9, 11; amendments to increase security of, opposed, 20-21; administration of, 46-65; harshly interpreted by William Williams, 46-56, 58, 59, 60, 62, 63, 64, 65, 66, 68, 69, 80, 95; increas-

- ing severity of, 74, 84-85, 164, 165, 166; contravene treaty rights, 85; and right of asylum, 115; and racial discrimination, 131, 335-336, 400; Jews affected by harsh interpretation of, 166, 170; incorrectly interpreted, 168-169, 170, 171; Charles Nagel on administration of, 185-199; exempt religious refugees, 235. *See also* Immigration; Literacy test; Naturalization; Quota law; Public charge; Race discrimination
- "Immigration Problem, The" (Jenks and Lauck), cited, 100; ref. to, 276
- "Immigration Problem and the Right of Asylum for the Persecuted (Kohler)", alluded to, 357
- Immigration Quota Law, 1921, 159. *See also* Immigration
- Immigration Restriction League, 154, 184, 235, 321
- "Important European Investigation of American Immigration Conditions and John Quincy Adams' Relation Thereto", ref. to, 300(n)
- "In Defense of the Immigrant" (Marshall), ref. to, 431
- "In der Neuen Heimath" (Eickhoff), alluded to, 307(n)
- Indentured servants, 286, 287, 300, 301, 306, 307 and (n), 308-309, 312-313
- Independent Order B'nai B'rith, 1, 18, 64, 79, 165, 348
- Indians, 392, 393, 395, 396
- "Industrial Commission Reports", ref. to, 283(n)
- "Industrial History of the United States" (Coman), alluded to, 290(n)
- Industrial Removal Office, 18, 68, 86, 175, 178, 180, 241, 294, 297, 429
- "Inequality of Human Races" (Gobineau), cited, 154
- Information Division, of Immigration Bureau, 16, 17, 21, 68
- International Colonization Association, 208
- "International Conciliation", ref. to, 337
- International Holy Alliance, 129
- International Immigration Conference, 29
- International Labor Office, 29
- "International Law" (Oppenheim), ref. to, 114(n)
- "International Law and the Alien Act" (Sibley), ref. to, 114(n)
- "International Law Digest" (Moore), ref. to, 108(n), 142(n), 327, 352
- International protection of human rights, 121-130
- Iowa, 180
- Ireland, 150, 286, 289
- Irish, 153, 159, 174, 176, 240, 282, 284(n), 285, 288, 291, 310 and (n)
- "Irish Emigration to the United States" (Byrne), alluded to, 285(n)
- Isaacs, Sir Rufus, 115; quoted, 93
- "Israel und die Völker" (Bloch), ref. to, 239
- Italian Immigrant Bureau, 294
- "Italian in America" (Lord Trenor and Barrows), cited, 292
- Italians, 150, 153, 175, 176, 240, 291, 295; assimilate rapidly, 160-161
- Italy, 22, 24, 26, 27, 150, 161, 172, 178, 203, 289, 401, 435
- Jablow, Morris, 67
- Jacobs, Joseph, 228, 241
- "Jahrbuch der Deutsch-Amerikanischen Gesellschaft von Illinois". *See* German-American Historical Society of Illinois, Yearbooks of
- James I of England, 113
- James, Lord, of Hereford, 94
- Japan, 22, 30, 159; U. S. violates treaty with, 21, 27-28, 30-31, 393; voluntarily regulates immigration to U. S., 143
- Japanese, legislative discrimination against, 134, 136, 137, 138, 331, 332, 336, 396, 397, 398; affected by Immigration Law of 1924, 161. *See also* Chinese Exclusion Laws
- Japanese Immigration Case, ref. to, 331, 411, 412, 418
- Jefferson, Thomas, 116, 117, 133, 173, 290, 341, 390; on the right of asylum, 9, 71, 100, 102, 118, 158, 183, 315, 323, 329; immigration policy of, 321, 322; ref. to "Writings" of, 117(n), 119(n), 360
- Jenks and Lauck, work by, cited, 100; ref. to, 276
- Jewish Agricultural and Industrial Aid Society, 18, 175, 179, 241, 249, 428
- Jewish Board of Guardians, 91, 94
- "Jewish Chaplain in France" (Levinger), alluded to, 243
- Jewish Colonization Association, 204, 205, 423, 424
- "Jewish Comment", ref. to, 78(n)
- "Jewish Daily Bulletin", ref. to, 367, 423(n)
- "Jewish Disabilities in the Balkan

- States" (Kohler and Wolf), cited, 427
- "Jewish Encyclopedia", 249; cited, 103; ref. to, 236, 237
- Jewish immigrants, distribution of, 17-18, 175, 178-179, 180, 241, 245, 345, 346, 347; Americanization work among, 19, 174-175, 230-231, 297, 298, 299, 424, 428, 429, 431; affected by quota law, 26, 35, 36; affected by harsh interpretation of law, 54, 55, 59, 60, 64, 80, 85, 166, 170, 171, 181, 182; affected by literacy test, 80, 82-83; aided by Secretary of Treasury, 96-97; passage money not paid by American Jews, 97; discussion concerning, 164-199; statistics on, 166; illiteracy among, 176-177, 200-228, 229, 298, 344, 351; not "birds of passage", 177-178; included in "new" immigration, 182; criticism of book by Burton Hendrick on, 232-250; religion as obstacle to Americanization, refuted, 242, 243; occupations of, 244-245; economic condition of, 245-246; quickly Americanized, 247-248, 292-293; work of Council of Jewish Women for, 296-299; language of, 401; work of Simon Wolf on behalf of, 425-426. *See also* Immigrants; Immigration; Jewish immigration
- Jewish Immigrants' Information Bureau at Galveston, 17-18, 202
- Jewish immigration, statistics on, 165, 166, 202, 230; caused by persecution, 229; "old" and "new", 230, 233, 234, 235, 240, 245. *See also* Immigrants; Immigration; Jewish immigrants.
- "Jewish Immigration to the United States from 1881 to 1910" by Samuel Joseph, review of, 229-231; alluded to, 243
- Jewish Publication Society, 424
- "Jewish Rights at the Congresses of Vienna and Aix-la-Chapelle" by Max J. Kohler, 129
- "Jewish Rights of International Congresses", by Max J. Kohler, cited, 129
- Jewish Territorial Organization, 17
- "Jewish Tribune", ref. to, 430(n)
- Jews, 284(n), 285, 289, 295; rights of, discussed at international conferences, 128-129; affected by quota provisions in Immigration Law of 1924, 150, 151, 152; valuable immigrants in England, 156; easily assimilated in new environment, 160-161; Matthew Arnold on, 162; statistics on illiteracy among, 291; affected by Naturalization Laws of 1929, 403. *See also* Jewish immigrants, Jewish immigration
- "Jews in America" by Burton J. Hendrick, criticism of, 232-250
- "Jews in America" (Wiernik), alluded to, 294(n)
- Johnson, Congressman, of Washington, participates in hearing for amelioration of Quota Laws, 37; chairman at hearing on proposed registration of aliens, 343, 346, 347, 348, 352, 353, 354
- Johnson Immigration Bill, 23, 24, 25, 27-28
- Johnson, Senator Hiram, 366
- Johnson, S. C., work by, cited, 301(n)-302(n)
- Johnston, Sir Harry H., on lack of homogeneity of English people, 156-157
- Jordan *vs.* Tashiro, ref. to case of, 331-332
- Joseph, Rabbi Jacob, 431
- Joseph, Samuel, 228, 424; review of book by, 229-231; alluded to, 243; cited, 244
- "Journal of Amer. Asiatic Association", ref. to, 142(n), 251(n), 263(n), 392(n); alluded to, 252
- "Journal of the American Irish Historical Society", ref. to, 285(n)
- "Journal of Political Economy", ref. to, 289(n), 304, 316
- Ju Toy, case of, cited, 274(n), 329, 349, 355
- "Judaicans", 149(n)
- "Judah P. Benjamin" (Butler), ref. to, 115(n)
- Judicial review of immigration cases, 3, 4, 63-64
- Juniata Limestone Co. *vs.* Fagley, ref. to case of, 333
- Justinian, right of asylum under laws of, 109
- Kansas, 180
- Kapp, works by, ref. to 286, 288; alluded to, 290(n), 307(n); cited, 302(n)
- Karmath *vs.* U. S., case of, cited, 44
- Keefe, Commissioner General of Immigration, 95
- Keiley, A. M., 404

- Kelley, Ogden A., 321
 Kellor, Frances, 297, 432
 Kent, Chancellor, quoted, 396
 Kent, Duke of, 122
 Kentucky, 403
 Kenyon bill, for registration of aliens, 354, 360
 King, Senator William H., disapproves proposed registration of aliens, 371
 Kishineff Massacre Petition, 428
 Knudson, work by, quoted, 123
 Kohler, Rev. Dr. K., 155
 Kohler, Max J., 67, 69, 387, 400, 424; participates in hearing for amelioration of quota laws, 32-45; letter from, urging reforms in administration of Chinese Exclusion Laws, 252-262; disapproves proposed registration of aliens, 340-362, 384-385; letter from, protesting against proposed Michigan alien registration law, 389-391
 Kohler [Max J.] and Wolf, work by, cited, 427-428
 Koreans, 85
 Krauskopf, Rev. Dr. J., 18
 Kuhns, work by, alluded to, 307(n)
 Labor, discussed at conference of Aix-la-Chapelle, 121
 La Follette, Senator Robert M., 435; disapproves proposed registration of aliens, 370-371
 La Guardia, [Fiorello], 365
 Lansdowne, Marquess of, 94
 Larmon, Charles W., 432
 Lasker, Bruno, opposes registration of aliens, 364-365
 Lau Ow Bew, ref. to case of 331
 Lavanburg, [Fred.], 298
 "Law, Magazine and Review", ref. to, 114(n)
 "Law of Aliens" (Henriques), alluded to, 114
 "Law Quarterly Review", ref. to, 112(n), 114(n), 285
 "Law Times", ref. to, 114(n)
 League for American citizenship, 363(n)
 League of Nations, 29, 129, 238, 336, 338
 Learned, works by, alluded to, 285(n), 302(n), 303(n), 304, 307(n); ref. to, 304; cited, 305
 Lecky, Wm. E. H., 233
 Lee Ah Yin, case of, 142, 264
 Legal disabilities of aliens in the United States, 327-339
 Lehman, Herbert H., 32; disapproves proposed registration of aliens, 381
 Lehman, Judge Irving, 32
 Leroy-Beaulieu, [Anatole], 233
 Levinger, Lee J., work by, alluded to, 243
 Lieber's Hermeutics, ref. to, 101(n)
 "Life and Letters of Zachary Macaulay" (Knudson), quoted, 123
 "Life of Wellington" (Maxwell), quoted, 130
 Lincoln, [Abraham], 173, 290
 Lippmann, Walter, 385, 386
 Lipsitch, I. Irving, 228
 "List of Books on Immigration" (Griffin), alluded to, 294(n)
 "Literature and Dogma" (Arnold), quoted, 162
 Literacy test for immigrants, 20, 78, 80, 81, 82, 161, 172, 176, 184; opposition to, 82, 187, 430, 433; affects Russian Jewish refugees, 82-83, 84, 87, 94; Russian Jewish refugees to be exempt from, 83, 84; discussion in House of Representatives on, 87-89; victims of persecution should be exempt from, 95; religious refugees exempt from, 99-100, 120, 235-236, 298, 433-434; Jews affected by, 176-177; case in regard to, 434. *See also* Immigrants; Immigration; Jewish immigrants
 Lithuanians, 291
 Littauer, Congressman Lucius N., 87, 88, 427
 Lodge, [Henry Cabot], 25, 84, 159, 160, 235, 236, 433, 435
 Loeb, Jacques, 249
 Löher, work by, quoted, 288
 Lohr, work by, alluded to, 307(n)
 London, 155
 Lords, House of, 94
 Loreburn, Lord Chancellor, 89
 Louisiana, 242
 Low, A. Maurice, 26; work by, ref. to, 282(n); alluded to, 290(n)
 Low, Seth, 431
 Lowell, [A. Lawrence], 235
 Lubin, David, 249
 Lurton, Justice, on immigration policy of the U. S., 61, 168
 Lyndhurst, Lord, 114
 McArthur. *See* Reynolds vs. McArthur
 McClellan, [George B.], 181
 MacClintock, S. J., work by, alluded to, 327(n)
 "McClure's Magazine", ref. to, 232

- McGrady, Edward, disapproves proposed registration of aliens, 368
- McHarg, Ormsby, 54
- McLane, Congressman, 312
- McMaster, John Bach, work by, alluded to, 133(n), 159; cited, 310(n); ref. to, 360
- Macaulay, Zachary, 124, 125
- Maclay, Senator James, quoted, 158, 283
- Madison, James, 117, 133, 158, 290, 329, 341, 390; ref. to "Writings" of, 117(n), 118(n), 360; on value of immigration, 283(n), 322
- Magna Charta, 30, 70, 95, 110, 112, 330, 411, 412
- Maine, 180, 333
- Maine, Henry Sumner, quoted, 133
- Malays, 85
- Marks, Marcus, M., 297, 432
- Marshall, James, 32
- Marshall, John, 322, 390; quoted, 34
- Marshall, Louis, 32, 44, 89, 167, 181, 297, 348, 353, 385, 426; 70th birthday tribute to, 430-437; befriends the immigrant, 430, 431-433, 433-435, 436
- Marten, F. F., work by, cited, 125
- Maryland, 180, 242, 285, 307(n), 311-312
- Mason, Samuel, 228
- Massachusetts, 180, 235, 240, 242, 245, 333, 432
- Massachusetts Bill of Rights, 3, 63, 72, 132
- Matthews, Judge Stanley, 132, 333
- May. *See* Wright *vs.* May
- May, Sir Thomas Erskine, work by, quoted, 109-110, 112, 114; cited, 113
- Maxey, Judge, naturalization decision by, 395-396
- Maxwell, Sir Herbert, work by, quoted, 130
- Medical examinations of immigrants, 14-15, 20, 48, 60, 73, 166, 171, 190, 191
- "Mein Antheil an der Politik" (von Gagern), ref. to, 301, 314
- Meltzer, Dr., 249
- "Memorial to The Allied Powers Assembled in Congress at Aix-la-Chapelle" by Robert Owen, 121
- "Memorial to the Governments of Europe and America on behalf of the Working Classes" by Robert Owen, 121
- Metcalf, V. H., letter by, on administration of Chinese immigration laws, 251-252
- Metternich, Prince, 127, 128, 129
- Mexican border, 413
- Mexican Indians, 392
- Mexicans, 136, 151, 370
- Mexico, 24, 409
- Meyer *vs.* Nebraska, case of, cited, 38, 334
- Michigan, 180, 333; Alien Registration Law in, 330(n), 389-391, 410, 414-415, 416
- "Migration Laws and Treaties", alluded to, 336
- Miller *vs.* Niagara Falls, ref. to case of, 333
- Miller, Rev. K. D., 385
- Minnesota, 180, 334
- Missouri, 242
- Money test, for immigrants, 9, 10, 20, 52, 53, 56, 68, 75, 169, 178, 190
- Montesquieu, cited, 102-103
- Moore, John Bassett, 101, 108, 109; works by, ref. to, 119(n), 142(n), 327, 352; alluded to, 136; on Chinese exclusion laws, 274(n)
- Moravians, 291
- "Morgen Journal", New York, cited, 52; alluded to, 64
- Morin *vs.* Nunn, ref. to case of, 334
- Morris, Robert, 174
- Mosaic Code and right of asylum, 103-104
- Mufson, Israel, disapproves proposed registration of aliens, 388
- Mylius case, 119
- Nagel, Charles, 62, 64, 81, 82, 84, 164(n), 168, 179; quoted, 46, 67; discussion by, on Jewish immigration, 185-199; on Simon Wolf, 425
- Nagle. *See* Chung Sum Shee *vs.* Nagle
- National Conference of Social Work, Proceedings of, ref. to, 408(n)
- National Farm School, 18, 429
- National Jewish Immigration Council, 200
- Naturalization, requirements for, made more severe, 85; traditional American policy in regard to, 85, 322; legal decisions in regard to, 85, 392, 395, 396, 397, 436; statistics on, 152-153; Congress on right of, 315; first Bill on, 158, 283; and the color line, 392-398. *See also* Immigration Laws; Naturalization Laws; Race discrimination
- Naturalization Act of 1906, 365

- Naturalization laws, violate treaties, 31, 393-395, 398; discussion on proposed amendment of, 40-43; race discrimination in, 131, 136, 399-405; inconsistent with Declaration of Independence, 394, 398; quoted, 399-400; violate Constitution, 403. *See also* Immigration Laws; Naturalization; Race discrimination
- Nebraska, 180, 334
- Negroes, the, 361, 393, 394, 395, 396; discriminatory legislation concerning, 131, 132, 133, 137
- "Neighbor, The" (Shaler), quoted, 134-135
- Nesselrode, Count, 127, 129
- Netherlands, the, 126, 130, 289, 301, 303. *See also* Dutch, the; Holland
- Netterer, Judge, 70
- New England, 25, 157, 158, 283, 284, 315
- New Hampshire, 180
- "New Immigration" (Roberts), alluded to, 294(n)
- New Jersey, 334, 432
- New York (City), 17, 18, 19, 20, 46, 47, 68, 169, 173, 175, 179, 180, 184, 236, 241, 245, 254, 255, 256, 288, 296, 298, 301(n), 307 and (n), 309, 340, 347, 358, 359, 385, 413, 424, 431
- New York (state), 66, 180, 240, 242, 245, 307(n), 333, 334, 390, 400, 403, 410, 429, 432
- "New York Evening Post", quoted, 7, 50, 69-70
- "New York Evening Sun", quoted, 206-207
- New York Immigration Commission, 297
- New York Indians *vs.* U. S., case of, cited, 271
- New York Public Library, 249
- "New York Times", ref. to, 22(n), 142(n)
- "New York Tribune", ref. to, 263(n)
- Ng Fung Ho *vs.* White, case of, cited, 274(n), 330, 355
- Nielson *vs.* Johnson, ref. to case of, 332
- "Niles' Register", ref. to, 290(n), 301(n), 302(n), 303, 312, 314
- Nordic, 152, 153, 154, 156, 160, 161
- Norris, Senator George W., disapproves proposed registration of aliens, 371
- "North American Review", quoted, 61; ref. to, 145(n), 288(n), 300
- "Norwegian Immigration into the United States" (Flom), alluded to, 285(n)
- Nunn. *See* Morin *vs.* Nunn
- Nye, Senator Gerald P., disapproves proposed registration of aliens, 371
- Ocean Navigation Co. *vs.* Stranahan, 48, 185
- O'Gorman, Senator, 435
- Ohio, 180, 242, 308, 311, 332
- Oldham, work by, alluded to, 154, 155
- O'Malley. *See* Engel *vs.* O'Malley
- Oppenheimer, Reuben, work by, on deportation of aliens, alluded to, 408; reviewed, 417(n), 418-420
- Oregon, 334
- Ormichund *vs.* Barker, case of, cited, 135
- Orsini's conspiracy, 114
- Osler, Sir William, quoted, 162
- "Our Chinese Exclusion Policy and Trade Relations with China" (Kohler), ref. to, 142(n)
- "Our Slavic Fellow Citizens" (Balch), cited, 292
- "Outlook", ref. to, 148(n), 269
- Owen, Robert, 121, 122; memorials by, presented to Conference of Aix-la-Chapelle, 123
- Paderewski, [Ignace Jan], 127, 239
- Page, Prof. T. W., ref. to work by, 116(n), 289(n), 304, 316
- Palatinate, the, 301, 310(n)
- "Palatine, The, or German Immigration to New York and Pennsylvania" (Cobb), ref. to, 286; alluded to, 307(n)
- Palestine, 85
- Palmerston, Lord, 114
- Paris, Congress of, 129
- Paris, Treaty of, 124, 301, 308
- Parliament, British, debate in, on right of asylum, 89-94, 100, 114-115
- "Parliamentary Debates", alluded to, 100
- "Passing of the Great Race" (Grant), 154
- Passports, and the Immigration Act of 1924, 33-34, 36, 37
- Peckham, Justice, 257, 273, 412
- Peirce, Assistant Secretary of State, 357, 358
- Penn, William, 286
- Pennsylvania, 157, 158, 173, 180, 240, 242, 245, 283, 286, 307(n), 308, 309, 310, 311, 312, 322

- Persecution. *See* Asylum, right of;
Religious refugees
- Philadelphia, 19, 47, 180, 184, 241, 288,
296, 307 and (n), 308, 309, 314
- Philippine Islands, 272
- Phillipovich, E. von, work by, ref. to,
302(n), 310(n); alluded to, 304
- Phillips, W. Allison, work by, cited,
129
- Pierce *vs.* Sisters of the Holy Name,
ref. to case of, 334
- Pitt, [William], 129
- Pittsburgh, 19
- "Pleas of the Crown" (Hale), cited,
112
- Pobedonostzeff, Procurator, 233
- Poland, 24, 26, 35, 127, 130, 150, 151,
161; characteristics of Jews of, 233,
236, 237, 238, 239; Clemenceau on
status of Jews in, 239
- Poles, the, 150, 176, 240, 289, 291, 295
- "Political Science Quarterly", ref. to,
108(n), 408(n)
- Pollock, Sir Frederick, 114
- Poore, Benjamin Perley, ref. to work
by, 116(n)
- "Popular Government" (Maine), ref.
to, 133(n)
- Population, non-English element in, in
early days, 284 and (n), 285, 286;
Jewish statistics for, 240, 241
- Portland, Oregon, 67
- Portugal, 124, 126
- "Position of American Economic His-
tory" (Callender), cited, 280
- Post, Secretary of Labor, 410
- Pouren case, 119
- "Proceedings of the Conference of
State Immigration, Land and Labor
Officials...", alluded to, 294(n)
- Proper, work by, alluded to, 283(n);
cited, 285
- Prussia, 128, 129, 130
- Public charge, likelihood of becoming,
6, 7, 9, 10, 47, 48, 53, 66, 68, 69, 70,
72, 75, 76, 80, 165, 166, 167, 169, 170,
171, 179, 182, 190, 191, 411, 435;
modification needed in law on, 11,
14-15, 16, 21. *See also* Immigrants
violates American principles, 26;
statement proposing amelioration of,
at Congressional hearing, 32-45;
holders of visas to have precedence
under, 36-37; separates families, 37-
39, 150, 151, 152; discussion on bill
as to permanent admission of visi-
tors under, 42-43, 45; discussion on
bill for admission of families under,
43-45; statistics of immigration un-
der, 150-151; affects Jews, 151, 234;
natives of countries north and south
of U. S. not subject to, 151; ap-
plication of, to religious refugees,
236; increases number of deporta-
tions, 409. *See also* Immigrants;
Immigration
- Race discrimination, legislation on, 21,
131-148, 335, 336; un-American in
character, 21, 131-148, 152, 158, 162,
163, 181, 402, 405; contrary to
Declaration of Independence, 131,
132, 149, 158; relatively recent in
origin, 132-133, 157-158; contravenes
treaties, 134, 137, 138-139, 140, 393;
English attitude toward, 135; dangers
of, 143, 147-148; immigration and,
149-163, 234-235; inherent in Immi-
gration Law of 1924, 150; anti-
Semitism and, 154; ancient origin
of, 154-155; Civil War fought as
protest against, 159; investigation of,
by Immigration Committee, 160;
growth of, 162; naturalization and,
392-398, 399-405; unconstitutional,
403. *See also* Chinese Exclusion
Laws; Immigration Laws
- "Race Distinctions in American Law"
(Stephenson), alluded to, 138, 336
- "Race Prejudice" (Finot), alluded to,
153
- "Race Questions and Prejudices"
(Royce), quoted, 163, 249-250
- "Race Questions and Provincialism and
Other American Problems" (Royce),
alluded to, 295
- "Races and Immigrants in America"
(Commons), alluded to, 285(n)
- "Races in the United States" (Ripley),
quoted, 284
- Raich. *See* Truax *vs.* Raich
- Raker, Congressman, participates in
hearing on proposed registration
of aliens, 341, 342, 343, 344, 347, 354,
355, 356
- Ratshesky, Mr., 32
- "Quarterly Journal of Economics",
ref. to, 293(n)
- "Question of Chinese Exclusion" (Hol-
combe), ref. to, 142(n)
- Quota law, 22-31; violates treaties, 22,
24, 25, 27-28, 30-31; foreign countries
protest against, 23; works hardship
on immigrants, 23, 34-35 41, 85-86;

- "Real Chinese Question" (Holcombe), ref. to, 270
- Redemptioners. *See* Indentured Servants
- "Redemptioners and Indentured Servants in....Pennsylvania" (Geiser), ref. to, 286(n); alluded to, 307(n)
- Reed, Senator, of Pennsylvania, 158, 339
- Registration of aliens, hearing before Congressional Committee in regard to, 340-362, 363-367; hardship worked by, 340, 342, 344, 348-349, 350-352, 356, 361-362; jurisdiction of, 343, 361; Jews opposed to, 348, 364-365; violates treaties, 349-350, 352-353; methods to be used in, 353-354; constitutionality of, 355; and exemption of religious and political refugees, 357; first law for, 360; a dangerous project, 363-391; attempted introduction of, 363, 364, 365, 366; un-American, 369, 381, 382, 383, 384, 385, 390; disapproved by legislators, 369-373; Blease bill for, 373-374; Cable bill for, 374-376; Aswell bill for, 376-380; disapproved by leading Americans, 381-391. *See also* Aliens; Naturalization
- Religious discrimination, Grover Cleveland on, 404-405
- Religious liberty, in American colonies, 116; traditional in U. S., 127, 157-158; discussed at international conferences, 126-130; principle of, denied by Naturalization laws, 403; U. S. intervenes in behalf of, 427
- Religious refugees, and right of asylum, 115; exempt from literacy test, 120, 235, 236, 298, 433, 434; exempt from immigration law, 182. *See also* Asylum, right of
- "Report of the Commission on Immigration of....New York", alluded to, 294(n)
- "Report of Inspection of U. S. Consulates in the Orient", cited, 358
- "Report on the Enforcement of the Deportation Laws of the U. S.", review of, 417-420
- Representatives, House of, hearings before, on the quota law, 32-45; literacy test for immigrants considered by, 82, 83, 84, 85, 87, 88, 89; hearings before, on the registration of aliens, 340-362, 365. *See also* Congress
- Republican Club, New York City, 46
- Reville, work by, alluded to, 110
- Revolution, War of, 173, 283, 322
- Reynolds, James B., 432
- Reynolds *vs.* McArthur, case of quoted, on passport question, 34
- Rhode Island, 116, 157
- Richards, Bernard G., disapproves proposed registration of aliens, 386-387
- Ridder, Jean de, 126
- "Right of Aliens to Enter British Territory" (Craies), ref. to, 114(n)
- "Right of Aliens under the Federal Constitution" (Alexander), alluded to, 327(n)
- "Right of Asylum, The" (Smith), ref. to, 114(n)
- "Right of Asylum, The, with Particular Reference to the Alien" by Max J. Kohler, ref. to, 99(n), 357, 360
- "Right of Sanctuary in England" (Trenholme), alluded to, 110
- "Riotous Career of the Know-Nothings" (McMaster), alluded to, 159
- Ripley, William Z., alluded to, 240, 302(n); work by, quoted, 284
- Roberts, Peter, 292; work by, alluded to, 294(n)
- Robinson, Dr. Frederick T., disapproves proposed registration of aliens, 382-383
- Robinson, Leonard G., 249
- Rockhill, Acting Secretary of State, 353
- Rodriguez, case concerning naturalization of, 392, 395-396
- Rome, 157; right of asylum in, 104, 105
- Roosevelt, Theodore, 28, 29, 78, 85, 131, 142, 145, 146, 159, 181, 187, 233, 247, 337, 361, 427, 428; opposed to race discrimination of immigrants, 149-150, 152, 362, 401-402; on Chinese Exclusion policy, 263
- Root, Elihu, 28, 435
- Rosenau, Prof. Milton J., 32
- Rosenthal, Herman, 237, 249
- Rosenwald, Julius, 32, 428
- Ross, Judge, 264, 265, 271
- Ross, Edward A., work by, quoted, 144; cited, 230
- Rothschild, Nathan de, 122
- Roumania, 78, 97, 150, 151, 166, 182, 203, 229, 232; educational disabilities of Jews in, 224-228; statistics of

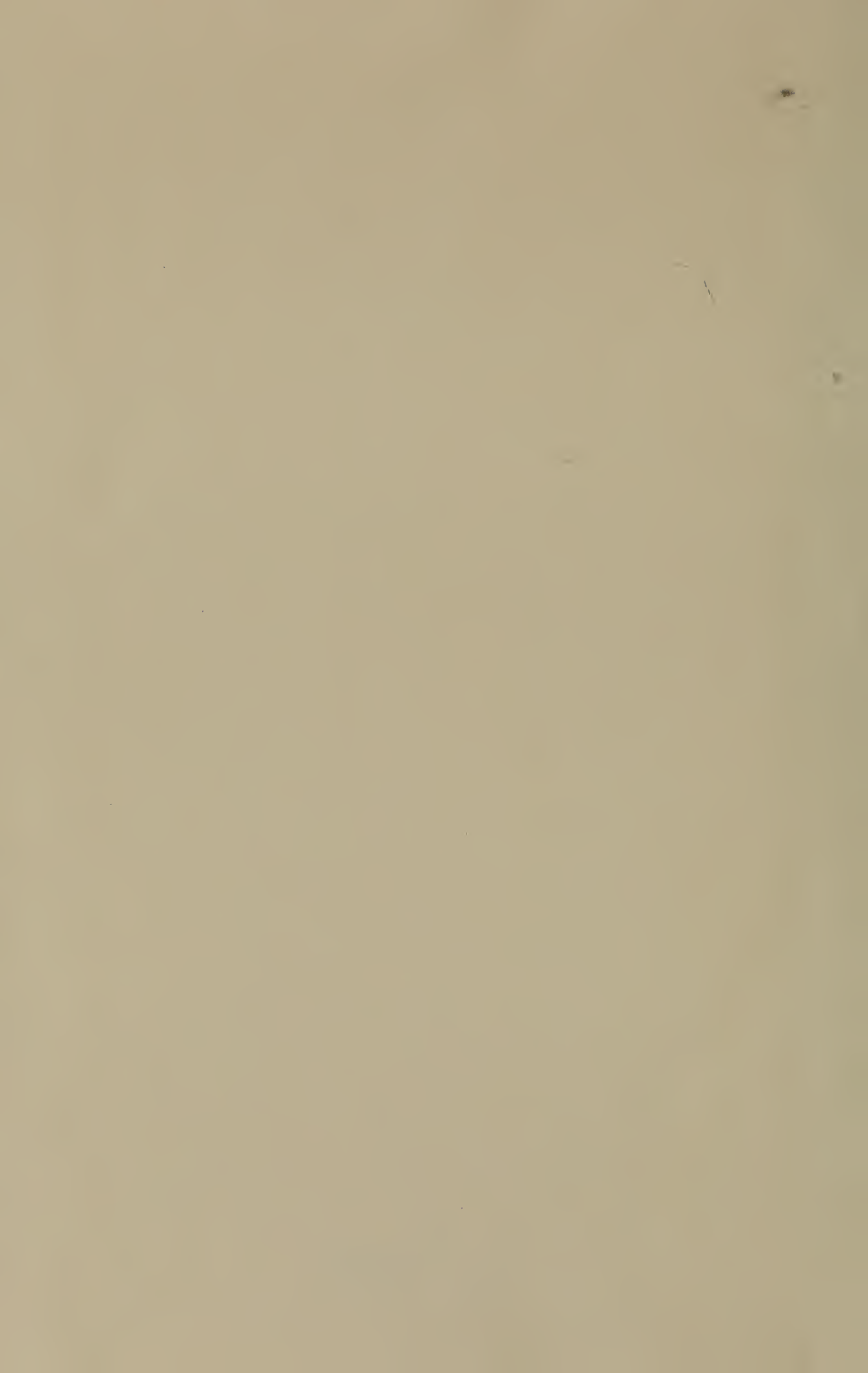
- Jewish immigration from, 230; U. S. intervenes in behalf of Jews in, 427
 Roumanians, 150, 153
 Royce, Josiah, quoted, 144, 163; on race prejudice, 147-148, 249-250; work by, cited, 295
 Rubinow, Dr. I. M., 228; ref. to work by, 204
 Runciman, Mr., 93
 Rupp, I. D., ref. to work by, 286(n)
 Rush, Benjamin, 286; work by, alluded to, 307(n), 310(n)
 Russia, 26, 35, 36, 66, 78, 79, 80, 97, 128, 130, 150, 151, 161, 166, 170, 171, 172, 176, 178, 179, 182, 203, 229, 232, 235, 271, 289, 401, 423, 424; literacy test affects Jews from, 82-83, 84; Jewish refugees from, to be exempt from literacy test, 83-84; discussion in British Parliament on admission of persecuted Jews from, 89-94; U. S. Secretary of Treasury helps Jewish refugees from, 96-97, 426; illiteracy of Jews in, 200, 201, 215, 244; educational disabilities of Jews in, 203-224, 298; characteristics of Jews of, 233, 236, 237, 238, 239, 240; occupations of Jews in, 244; quick Americanization of Jewish immigrants from, 247-248; U. S. objects to discrimination against American Jews by, 405. *See also* Jewish immigrants
 "Russian Jew, The" (Cahan) alluded to, 244
 "Russian Jew in America" (Bernheimer), alluded to, 244
 Russians, 150, 153, 240, 291, 398
 Sabbath, Congressman, opposed to registration of aliens, 365
 St. Louis, 19
 Saito, case in regard to naturalization of, 392, 393, 397
 Salomon, Haym, 174
 Samuel, Sir Herbert, 78
 Samuel, Stuart, 91
 San C Po, case in regard to naturalization of, 395
 San Francisco, 333
 "Sanctuaries and Sanctuary Seekers of Medieval England" (Cox), alluded to, 110
 Sanders, Leon, 167, 433
 Sawyer, Judge, 396, 397
 Saxony, 130
 Scandinavia, 289
 Schiff, Jacob H., 297, 344, 426; memorial tribute to, 427-429; and the Roumanian Note of John Hay, 427; and the Kishineff Massacre Petition, 428
 "Schooling of the Immigrant" (Thompson), alluded to, 360
 Schools, case concerning use of foreign language in, 38
 Schurman, [Jacob Gould], 82, 176
 Schurz, Carl, 176; ref. to work by, 131(n), 285(n)
 Schwartz case, 192-193
 Scotch, 284(n), 288
 Seattle, 70
 Seidensticker, work by, alluded to, 307(n); ref. to, 312
 "Select Essays in Anglo-American Legal History", ref. to, 115(n)
 "Selected Addresses and Papers of Simon Wolf", ref. to, 425(n)
 "Selections from the Economic History of the United States" (Callender), alluded to, 285(n)
 Senner, Dr., 176
 "Separation of the Races in Public Conveyances" (Stephenson), ref. to, 138
 Sergeant, Congressman, 312
 Shaler, Professor, quoted, 134-135
 Sharpe, Granville, 124
 Siam, 30
 Sibley, N. W., ref. to work by, 114(n)
 Sibley and Elias, work by, ref. to, 110(n); alluded to, 107, 114, 117
 Simkhovitch, Prof., ref. to work by, 206
 Sing Tuck, case of, cited, 355
 Sinnott, Congressman, participates in hearing for amelioration of Quota Laws, 37
 Skuratowsky, Hersch, ref. to case of, 3, 5, 55, 69, 400
 Slavery, right of asylum and, 106; discussed at Conference of Aix-la-Chapelle, 124-126
 "Slavery and Indentured Servants" (Byrd), ref. to, 287(n), 307(n)
 Slovenians, 291
 Smith, Senator, 82, 89
 Smith, Alfred E., 385, 386
 Smith, G. A., ref. to work by, 114(n)
 Society for the History of the Germans in Maryland, Reports of, ref. to, 307(n)
 Solomon, Abraham, 228
 "Some Roads towards Peace" (Eliot), ref. to, 275(n)

- South America, 24
 "South Carolina Laborers' Case", ref. to, 7
 Spain, 22, 124, 126, 129, 271
 Spanish, the, 285
 "Speeches, Correspondence and Political Papers" (Schurz), alluded to, 285(n)
 Speranza, G. C., 432
 State Department, letter from, on invalidation of passports by Immigration Act of 1924, 34-35
 "Statements and Recommendations.... by Societies and Organizations Interested....in Immigration", ref. to, 79; cited, 346
 Steiner, Edward A., 292
 Stephen, James, 124, 125
 Stephenson, G. T., works by, ref. to, 138; alluded to, 336
 Stern, Judge Horace, 32
 Stoddard, Lothrop, 154
 Stone, Senator, 435
 Story, Judge, work by, quoted, 403
 Stranahan. *See* Ocean Navigation Co. *vs.* Stranahan
 Stratton. *See* Brink *vs.* Stratton
 Straus, Oscar S., 28, 66(n), 82, 131, 142, 144, 145, 146, 359, 385, 386, 408, 427; works by, cited, 78, 119(n); on race discrimination, 402
 Straus, Mrs. Oscar S., 298
 Sulzberger, Cyrus L., 167, 433
 Sulzberger, Mayer, 436
 Sulzer [William], 65
 Sumner, Charles, 131, 335, 394, 395; ref. to works by, 132(n)
 Supreme Court, 30, 34, 38, 73-74, 117, 132, 135, 136, 138, 140, 142, 185, 253, 255, 257, 258, 263, 271, 272, 273, 274 (n), 275, 330, 332, 333, 336, 355, 356, 390, 392, 396, 402-403, 409, 411, 412, 415, 433, 434, 435, 436
 "Survey, The", ref. to, 121(n), 285(n)
 Swabia, 301
 Swedes, 282
 Swift, John F., 266
 Swiss, the, 282, 288, 303, 306
 Switzerland, 78, 289, 303, 305
 Taft, [William Howard], 78, 79, 81, 145, 146, 178, 181, 233, 337, 433; works by, alluded to, 337, 359
 Talleyrand, 127
 Tashiro. *See* Jordan *vs.* Tashiro
 Taylor, Congressman J. Will, on proposed registration of aliens, 372-373
 Techt *vs.* Hughes, ref. to case of, 334
 Templar *vs.* State Board, ref. to case of, 333
 Thayer, William R., quoted, 248
 Theodosian Code, right of asylum under, 109
 "They Who Knock at Our Gates", by Mary Antin, cited, 70-71
 Thomas, Norman, disapproves proposed registration of aliens, 383
 Thompson, F. V., work by, alluded to, 361
 Thurber, F. B., letter to, on administration of Chinese immigration laws, 251-252; letter to, charging harsh administration of Chinese immigration laws, 252-262
 Tillson, Congressman John Q., disapproves proposed registration of aliens, 373
 Tobar y Borgovo, C. M., ref. to work by, 107(n)
 Todok *vs.* Union Bank of Harvard, ref. to case of, 332
 Tokushige. *See* Farrington *vs.* Tokushige
 Toledo, Council of, 105
 Tolstoi, Count, 232
 Tom Hong. *See* United States *vs.* Tom Hong
 Toy and Ginzberg, work by, cited, 103
 Trade, affected adversely by Chinese Exclusion Acts, 145
 "Treasury Decisions", alluded to, 407
 Treaties, cases in regard to, 271, 272, 273, 274, 393. *See also* Chinese Exclusion Laws
 "Treatise on the Laws Governing the Exclusion and Expulsion of Aliens in the United States" by Clement L. Bouvé, review of, 406-407
 "Treaty Power, The" (Butler), alluded to, 136; ref. to, 142(n)
 "Treaty Rights of Aliens" (Taft), 337
 Trenholme, Prof. N. M., work by, alluded to, 110; quoted, 110-111
 Trenor, Lord, and Barrows, work by, cited, 292
 Trescott, William Henry, 266
 Trevelyan, 115; quoted, 92
 Trinidad. *See* Yu Cong Eng *vs.* Trinidad
 Truax *vs.* Raich, ref. to case of, 333, 415-416
 Tsoi Sim *vs.* U. S., case of, cited, 45
 Tucker *vs.* Alexandroff, case of, cited, 272
 Turkey, 78, 423

- Turks, 153
 Turney, C. E., 337
 "Twenty Years of Hull House" (Addams), alluded to, 294(n)
 "Two Hundred and Fiftieth Anniversary of the Settlement of Jews in the United States", alluded to, 243
 Uhl, Byron H., 66
 Ullman, Isaac, 32
 Umbreit. *See* Disconto Gesellschaft *vs.* Umbreit
 Union of American Hebrew Congregations, 1(n), 164(n), 172, 242. *See also* Board of Delegates of Union of American Hebrew Congregations
 United Hebrew Charities, New York, 293, 298, 299
 United States, 125, 130; non-English elements in early population of, 25, 157, 281-282, 283, 284 and (n), 285, 286, 287, 302(n); right of asylum in, 78, 79, 83, 97, 98, 100, 104, 116, 117, 118-120, 315, 357; race legislation in, 131-148; religious liberty traditional in, 157-158, 404-405; liberal immigration policy traditional in, 158-159; characteristics of immigrant races quickly changed in, 160-162; growth of race discrimination in, 162; Jewish population of, 241, 242; statistics on aliens in, 281-282, 284 (n); Redemptioner system in, 286-287, 300, 301, 306, 307 and (n), 308-309, 312-313; an early European investigation of immigration to, 300-320; statistics on early immigration to, 301 and (n)-302(n); studies in early German immigration to, 307 (n); John Quincy Adams on immigration policy of, 308, 315, 317, 318; legal disabilities of aliens in, 327-339; statistics on illiteracy in, 361; protests to Russia on discrimination against American Jews, 405; intervenes in behalf of Jews of Roumania, 427. *See also* Aliens; Immigrants; Immigration; Registration of aliens
 "United States and Peace" (Taft), alluded to, 337
 United States *vs.* Tom Hong, case of, cited, 254
 Vermont, 180
 Versailles, conference at, 121, 126, 127, 129
 Vienna, 423; Congress of, 121, 124, 126, 127, 128, 130; Treaty of, 301, 308
 Virginia, 285, 403
 Visas, bill regarding, 33-37
 Voorhies. *See* Arrowsmith *vs.* Voorhies
 Wagner, Senator Robert F., 366; disapproves proposed registration of aliens, 369-370
 Wald, Lillian D., 27, 292, 297, 432
 Waldman case, 434
 Walker, General, works by, alluded to, 285(n); ref. to, 288(n), 291(n)
 Walker, James J., disapproves proposed registration of aliens, 381-382
 Warburg, Felix, 32
 Washington, [George], 173, 290; on right of asylum, 323
 Washington (state), 333, 411
 Watson, Senator James E., on proposed registration of aliens, 371-372
 Way, Lewis, 124, 125, 128
 Webster, Daniel, 115(n)
 Wellington, Duke of, 125, 127, 129
 Welsh, 291
 Wessenberg, 128
 Westermarck, Edward, cited, 103
 Wharton, Secretary of State, protests about Russian discrimination against passports of American Jews, 405
 Wharton's "American State Trials", alluded to, 342
 Wheaton, Henry, 316
 White, Representative, participates in hearing on proposed registration of aliens, 346
 White, Andrew D., 232
 White, Edward F. *See* Ng Fung Ho *vs.* Edward F. White
 "White Servitude in the Colony of Virginia" (Ballagh), alluded to, 287 (n), 307(n)
 Whitney, Edward B., 432
 Wickersham, Attorney General, 17, 178, 345
 Wiernik, [Peter], work by, alluded to, 294(n)
 Wigmore, Prof., work by, ref. to, 136, 392, 393, 397
 Wilberforce, William, 124, 125
 Willcox, Prof. Walter F., 241, 293; work by, cited, 245; ref. to, 284(n); alluded to, 302(n)
 Willes, Justice, quoted, 135
 William I, of Netherlands, 126
 Williams, Roger, 157
 Williams, Dr. Talcott, 361

- Williams, William, 7, 9, 13, 426; harsh immigration policy of, 46-60, 62, 63, 64, 65, 66, 68, 69, 72, 80, 95
- Wilson, James, on value of immigration, 173, 283, 322
- Wilson, Woodrow, 71, 121, 127, 129, 130, 159, 433; against discriminatory immigration legislation, 86, 87; on right of asylum, 99
- Winkler, Helen, 228, 298
- Wirt, William, 312
- Wisconsin, 180
- Wise, Dr. Stephen S., disapproves proposed registration of aliens, 385
- "With The Fathers" (McMaster), alluded to, 133(n); ref. to, 360
- Wolf, Simon, 79, 89, 97, 165, 167, 193, 194, 195, 199, 427, 433; work by, alluded to, 243; cited, 428; memorial tribute to, 425-426
- Women's Clubs, General Federation of, 299
- Wong Wing *vs.* U. S., ref. to case of, 329
- Woodbine, N. J., 18, 424, 427
- "World's Work", ref. to, 232; alluded to, 235
- Wright, Carroll, ref. to work by, 294 (n)
- Wright *vs.* May, ref. to case of, 334
- Württemberg, 301, 305, 306
- Wu Ting Fang, quoted, 145
- Yalden, Prof., 428
- Yamasaka, ref. to case of, 411
- Yellow races, 136. *See also* Chinese exclusion laws; Race discrimination
- Yick Wo *vs.* Hopkins, case of, 71-72, 76, 132, 332-333, 336, 402-403
- Young Men's Christian Association, 79, 294, 346
- Yu Cong Eng *vs.* Trinidad, ref. to case of, 334
- Zarikoew, Sabas, case of, 66, 67
- "Zeitschrift für Vergleichende Rechtswissenschaft", ref. to, 103(n)
- Zurbrick. *See* Browne *vs.* Zurbrick

3665⁶⁶ 141





University of
Connecticut
Libraries
